

**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/34/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/06)

Date: 30-07-2021

Name and address of the applicant	:	M/s. Greenbrilliance Renewable Energy LLP, Plot No.1408, GIDC Estate, Waghodia, Vadodara-391760.
GSTIN of the applicant	:	24AAPFG8445G2Z3.
Date of application	:	24-2-21.
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	:	15-6-21.
Present for the applicant	:	Shri Jay Patel (Partner)

BRIEF FACTS

The applicant, M/s. Greenbrilliance Renewable Energy LLP, supplies solar photovoltaic panels and Solar EPC services. The applicant is empanelled as channel partner to execute the solar rooftop system in Gujarat under the Surya Gujarat Yojna 2019-20 and 2020-21:

“Empanelment of Agencies for Design, Supply, Installation, testing & commissioning of Grid connected Rooftop Solar Photovoltaic Systems in Residential premises, aggregating to 600 MW, including five years comprehensive maintenance in the state of Gujarat during the year (2019-20).”

EOI No:PGVCL/DSM/EOI/SRT/2019-20/01 dated 20-7-19.

The Chief Engineer(Tech.)

Paschim Gujarat Vij Company Ltd.,

CIN:U40102GJ2003SGC042908., Regd. & Corporate Office,

“Paschim Gujarat VijSevasadan”, Laxminagar,

Nana Mava main road,Rajkot-360004.

2. The applicant has submitted that under the above mentioned scheme, beneficiaries could avail benefits of 40% subsidy of solar system cost for systems upto 3KW and 20% subsidy of solar system cost for systems from 3KW-10KW; that the beneficiaries have to pay the channel partner the amount after deducting the subsidy portion from the total system cost and after successful installation of the solar system, the channel partner has to apply to the respective electricity distribution company(DISCOM) of the region for subsidy and the funds are released by the respective DISCOM directly to channel partners; that the total rate discovered through tendering process for the year 2019-20 is as follows(as per Empanelment letter PGVCL/DSM/SRT/9430 dated 12-9-19):

Sr. No.	Solar Rooftop PV System Capacity range in KW	Total Rate in Rs. Per Wp(DC) (including GST)
1.	1.00 – 1.5KW DC	46.827
2.	1.51 – 2.5KW DC	46.555
3.	2.51 – 3.5KW DC	46.337
4.	3.51 – 4.5KW DC	45.738
5.	4.51 – 5.5KW DC	45.030
6.	5.51 – 6.0KW DC	44.006

7.	Above 6KW(DC) and upto 10KW(DC)	43.005
8.	Above 10KW(DC) and upto 25KW(DC)	38.006
9.	Above 25KW(DC) and upto 50KW(DC)	37.505
10.	Above 50KW(DC) and upto 100 KW(DC)	36.002
11.	Above 100KW(DC)	33.999

3. The applicant has submitted an example of 4.29 KW solar rooftop system, wherein we consider 330W x 9 Nos. = 4290W(DC) Solar panels and inverter of size 4200W, then the cost of this solar system inclusive of GST is calculated as = $4290 \times 45.738 = \text{Rs.}196216.02$. The recommended solar PV array capacity in KW shall be in a range of 100%-110% of inverter capacity i.e. if the inverter capacity is 5KW, then the Solar PV array capacity should be from 5KW to 5.5KW and for subsidy calculation, minimum of following three shall be considered.

1. Applied SPV Capacity in KW at the time of registration.
2. Solar PV array capacity in KWp.
3. Inverter Capacity in KW.

‘Subsidy for 4.29KW system, Solar Panels: 4.29KW and Solar inverter: 4.2KW. Calculate subsidy on 4200W as per above tender condition.

40% of subsidy for first 3KW = $3000 \times 45.738 \times 40\% = 54885.6 \text{ Rs.}$

20% of subsidy on incremental value above 3 KW = $1200 \times 45.738 \times 20\% = 10977.12$.

Total subsidy = $54885.6 + 10977.12 = 65862.72 \text{ Rs.}$

Thus, accessible value of solar system = 180180 Rs.

GST applicable(8.9%) = 16036.02 Rs.

Total value of solar system inclusive GST – Rs.196216.02.

Subsidy to be received from DISCOM = Rs.65862.72.

Customer payable = $(196216.02 - 65862.72) = \text{Rs.}130353.3$.

Thus, GST of 15036.02 Rs. is applicable.

The applicant has attached copy of invoice, ledger of customer and DISCOM subsidy release voucher.

4. The applicant has further submitted that even though subsidy amount is disbursed by DISCOM, the subsidy is received from central or state governments; that the state subsidy shall be limited to only residential sector beneficiaries to those who are consumers of the DISCOM; that the state subsidy shall not be applicable for beneficiaries other than residential category and the GOG subsidy or the MNRE subsidy shall be 40% or 20% as the case may be of the lowest cost per KW discovered under this EOI or benchmark cost announced by MNRE, which is lower; that the minimum capacity of rooftop SPV Solar Plant to be installed shall be not less than 1 KW for single site; that all provisions as amended by State/MNRE, GOI from time to time in respect of subsidy, norms of admissible beneficiary and allowable capacity of PV systems shall be applicable to this scheme accordingly; that remaining cost will be borne by beneficiary; that GOG subsidy shall be governed @ 40% OR 20% as the case may be of the above benchmark cost or lowest price that shall be discovered under this EOI; that state subsidy of 40% shall be available for solar roof top systems upto 3KW; and 20% for solar roof top systems beyond 3 KW and upto 10KW, installed and commissioned by private residential consumers; that the above subsidy shall be in parallel with the Central financial assistance of the Government of India available through its Ministry of New and Renewable Energy(MNRE) i.e. the available subsidy shall be either of the state subsidy or MNRE subsidy, but not both.

5. As per GST Law, valuation of GST “it includes any taxes, fees, charges levied under any law other than GST law, expenses incurred by the recipient on behalf of the supplier, incidental expenses like commission and packing incurred by the supplier, interest or late fees or penalty for delayed payment

and direct subsidies(except government subsidies) are required to be added to the price(if not already added) to arrive at the taxable value; that as per Section 15(2)(e), subsidies directly linked to the price(excluding subsidies provided by the Central and State Governments)are includible in 'value' for charge of GST; that with the above reference of tender document and GST Law, it can be interpreted that the subsidy amount disbursed is state or central subsidy and hence the subsidy can be excluded while considering the taxable value of the solar system. The applicant has stated that the above 4.29 KW system can also be billed as follows:

- For installation of 330W x 9 Nos. = 4290W(DC) Solar panels and inverter of size 4200W, the cost of this solar system would be = $4290 \times 45.738 = 196216.02$ Rs.(as calculated earlier).
- Subsidy amount = Rs.65862.72(as calculated earlier).
- Total value of solar system inclusive GST = $196216.02 - 65862.72 = 130353.3$ Rs.
- Accessible value of solar system = Rs.119700.
- GST applicable(8.9%) = $119700.3 \times 8.9\% = 10653.3$ Rs.
- Total value of solar system inclusive GST = Rs.130353.3.

6. The applicant has submitted that considering above interpretation, calculation of GST applicable on the system is Rs.10653.3 as compared to GST Rs.16036.02; that they have been following former methodology of generating invoices, however, under light of above, is later methodology appropriate. As petitioner, they want to know whether the method of GST collection as per former approach or later approach is correct.

Questions on which Ruling sought:

1. Whether subsidy should be reduced for arriving at Ex-factory value in order to collect the GST on goods supplied to the customer under the rooftop solar project?
2. If yes than whether we should claim refund for the excess amount of GST paid by us to the department?
3. If no then whether direction to this effect should be given to all other supplier for collection of GST on subsidy amount?

Personal Hearing:

7. Shri Jay Patel appeared for personal hearing (Video Conferencing) on 15-6-21 and reiterated the submissions made in the application.

This Authority noticed the following issues in the said application and discussions were held with the applicant during the hearing on these issues, as follows:

- i. The First Question on which Ruling was sought refers to subsidy being reduced from the ex-factory value in order to collect the GST on goods supplied.
We informed the applicant that the ex-factory value mentioned is not in consonance with the cited EOI as the price in the contract is based on System Cost as per para 52 of the said EOI.
- ii. Shri Patel was informed that Questions (B) and (C) were not covered under any clauses of Section 97(2) CGST Act, 2017 and thereby not admissible.

Additional Submissions by the Applicant:

The applicant vide letter dated nil, received on 21-6-21, rephrased the Advance Ruling Questions as follows:

(A) Whether subsidy amount is to be reduced for arriving at the taxable value of the solar system from the system price declared by the Nodal agency? And the GST liability shall be on the taxable value calculated after subtracting the subsidy amount from the system price?

(B) What will be the implication of sub-section (2) of Section 17 if the taxable value is derived after subtracting the subsidy amount from system price?

8. The applicant submitted that they rectify their query in the original application by replacing words 'cost of the solar system' instead of 'ex-factory value'; that the solar subsidy scheme has been framed by the Ministry of Renewable Energy in order to reduce the carbon foot print and encourage the use of renewable energy and the scheme has been facilitated by the government through the DISCOM which is acting as facilitator to promote the use of Solar system by the individual house hold in the country; that in Gujarat, the scheme has been monitored and implemented by the various DISCOM such as PGVCL, MGVCL, DGVCL, UGVCL and Torrent Power ltd; that the cost of the system, its installation and commissioning are being supervised by the DISCOM for the Roof top solar scheme of the Government of India and Government of Gujarat who provide the subsidy to individual house hold for use of the solar power generating system on the roof of the residential house; that the money has been paid by the Government to DISCOM and DISCOM, after successful installation and commission of the solar system at the residential unit of the individual house hold, pays the money to the solar system supplier directly; that the price of the system is fixed by DISCOM on per KW basis and supplier of solar system has to collect that price from customer; that customer is entitled to receive the subsidy amount from the Government, the DISCOM (being nodal agency to disbursing the subsidy) is making direct payment of subsidy portion of solar system supplier on behalf of the customer and customer is making less payment to the supplier of the solar system to the extent of the subsidy entitlement.

9. The applicant submitted sample copies of the following documents of solar rooftop customer as follows:

- a. Filled up application form to apply for solar system.
- b. Registration letter from DISCOM.
- c. Joint Inspection Certificate.
- d. Meter Sealing Report.
- e. MGVCL TFR payment receipt.
- f. Subsidy summary sheet.
- g. Subsidy payment voucher by MGVCL (shows amount released after deduction of TDS, GST, cess and performance security).

10. The applicant has stated that they would like to have clarification on the applicability of Section 17 of the GST Act with respect to subsidy value received from the Government since the subsidy is given by the Government to customer and they as solar system supplier would like to know regarding the proportionate reversal of the input tax credit to be reversed (on the material

used for making solar system) in respect to the subsidy portion on which their GST liability would be reduced.

D. FINDINGS:

11. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

12. We have carefully considered all the submissions made by the applicant. To accord the benefit to deduct subsidy portion for arriving at transaction value with the customer, the applicant was not able to produce evidence that the subsidy was indeed given/borne by the Government. Therefore, we requested the assistance of Gujarat Urja Vikas Nigam ltd (GUVNL) authorised nodal agency for implementation of the scheme in the State, vide letter dated 8-7-2021 issued Vide F.No.GAAR/AR-2021/F-06/75176 to inform if the subject subsidy was given by the Government. In their reply, GUVNL vide its letter ACCTTS/GM(F&A)/Adv.Ruling/584 dated 22-7-2021 submitted that the subsidy given by DISCOMs to empanelled Agencies/Vendors to execute Solar Rooftop PV systems in the residential premises of consumers under the 'Surya Gujarat' scheme is actually given by State Government/ Central Government and that the DISCOM is only a facilitator between the Government and supplier (empanelled partner) of solar rooftop PV systems in disbursing the subsidy.

13. We find that the subsidy portion provided by the Government shall not be included in the value of the supply to arrive at the taxable value, as per Section 15(2) (e) CGST Act.

14. We examine the subject EOI No:PGVCL/DSM/EOI/SRT/2019-20/01 dated 20-7-19 that all the rates quoted by the bidder will be inclusive of GST. The following relevant paragraphs/ pages of the EOI wherein the rates are inclusive of GST is reproduced as follows:

S.No	Paragraph/ page number of EOI	Remarks
2	Part 4(A) b, page 29 General and Commercial Terms and Conditions	<i>'All EOI offers will be evaluated on Price Rate in Rs.perWp basis for each of the SPV system Capacities & Ranges INCLUSIVE of total system cost, its installation, commissioning, transportation, insurance, five years CMC, and applicable fees, CONNECTIVITY CHARGES, COST OF BI-DIRECTIONAL METER & SMC Box, METER TESTING FEE, etc., including GST and all applicable taxes & duties for determining L1 rate in each of the SPV Capacities & ranges.</i>
2	Part F, 4A(e) Table, page 30	Rates inclusive of GST
3	4(A) (g), page 31	Rates quoted by bidder will be inclusive of GST. Bidders are advised to take into consideration any such escalations in the prevailing taxes/levies/duties. [Rates quoted by Bidder will be on F.O.R. destination at consumers premises basis, price shall be inclusive of taxes, levies, duties, packing, forwarding, freight, insurance, loading, unloading, supply, installation, commissioning, meter charges, meter testing fee, SMC Box charge, connectivity charges, 5 years CMC Charges etc. and any/all charges for successful Supply and Installation of the systems at any locations in the State of

		<p>Gujarat and all other miscellaneous expenses of marketing, commissions etc. if any.</p> <p><u>The rates quoted by the Bidder will be inclusive of GST</u>, Work Contract Tax, welfare cess or any other taxes applicable to such work. Any escalation in such taxes/levies during the tenure of the offer/Empanelment will not be paid by Consumers and Bidders are advised to take into consideration any such escalations in the prevailing taxes/levies/duties. In no circumstances, escalation in the prices will be entertained.’]</p>
4	Para 52, page 48	<p>‘Rates quoted by Bidder should be FIRM and on F.O.R. destination at consumers premises basis, price shall be inclusive of taxes, levies, duties, packing, forwarding, freight, insurance, loading, unloading, supply, installation, commissioning, meter charges, meter testing fee, SMC Box charge, connectivity charges, 5 years CMC Charges etc. and any/all charges for successful Supply and Installation of the systems at any locations in the State of Gujarat and all other miscellaneous expenses of marketing, commissions etc. if any.</p> <p><u>The rates quoted by the Bidder will be inclusive of GST</u>, Work Contract Tax, or any other taxes applicable to such work. Any escalation in such taxes/levies during the tenure of the offer/Empanelment will not be paid by Consumers and Bidders are advised to take into consideration any such escalations in the prevailing taxes/levies/duties. In no circumstances, escalation in the prices will be entertained.’</p>
5	Para 57 , on Page 49 & 50	<p><u>The F.O.R. Destination at consumers premises basis prices are including GST and Cess as applicable. The amount and % of GST and Cess as applicable should clearly be indicated separately. (GST/Cess means all applicable Tax/Cess under GST Laws. GST laws means IGST Act, GST(Compensation to the State for Loss of Revenue) Act, CGST Act, UTGST Act and SGST Act, 2017 and all ancillary legislations).</u></p> <p>Supplier/Empanelled Agency should charge GST in invoice at the rate as agreed to/mentioned in acceptance of EOI document only and any deviation in the same shall not be accepted. Further, any additional liability of GST(later on due to wrong mentioning of GST rate, mis-interpretation of HSN/SAC Code, etc.) over and above as charged in the invoice shall be borne by the Supplier/empanelled Agency.</p>

15. We find that the bidder rates in the EOI are inclusive of GST. Further, **We find that the Subsidy is calculated on the total rate in Rs.per Wp(DC). This rate is inclusive of GST.** To make it clear, as for applicant’s illustration at paragraph 2 and 3 of our Ruling, the subsidy amount was arrived at by calculation on the basis of the rate per Wp(DC) for a Solar Rooftop PV System, which was inclusive of GST. Also, the letter of intent dated 7-10-20 issued by PGVCL to the applicant, the prices of Solar Rooftop PV System for various capacity ranges (in KW) are inclusive of GST, said Table of letter dated 7-10-20, reproduced as follows:

Sr. No.	Solar Rooftop PV System Capacity/ Capacity range in KW	Price to be Match(<u>unit and cost including GST) Rs./Wp(DC)</u>)
1.	1.00 KW	46.8270
2.	1.01 KW to 2.00 KW	42.9937
3.	2.01 KW – 3.00 KW	41.9918
4.	3.01 KW – 4.00 KW	40.9932
5.	4.01 – 5.00 KW	40.9932
6.	5.01 – 6.00 KW	40.9932
7.	Above 6KW and upto 10KW	40.9932

From the aforementioned paragraphs, it is forthcoming that subsidy is calculated on the rate in Rs per Wp(DC) which is inclusive of GST. The illustration of subsidy submitted by the applicant at paragraph 2 and 3 of this Ruling brings home the point that when subsidy is calculated on a rate inclusive of GST, therefore, Subsidy portion is inclusive of GST. As per Article 265 of the Constitution of India "no tax shall be levied or collected except by the authority of law". The provisions of Section 76(1) of CGST Act is reproduced as follows:

'76 (1): Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.'

16. We find that the applicant has collected Subsidy from the Government in this regard and this subsidy amount is inclusive of GST, as detailed in aforementioned paragraphs, the applicant is required by law to pay to the Government the said amount in the subsidy representing GST, irrespective of the position of law that subsidy portion is to be deducted from the value of supply charged to the customer, for arriving at the taxable value.

17. The applicant sought Ruling on the implications of Section 17(2) CGST Act, if taxable value is derived after subtracting the subsidy amount from the system price. The provisions of Section 17(2) CGST are attracted when the applicant is effecting taxable supplies and exempt supplies. The subject supply of the applicant is a taxable supply and for the reason that taxable value for charging GST is arrived after subtracting subsidy, does not alter the nature of taxable supply. It remains taxable supply. Therefore, for this matter presented before us, there is no implication of section 17(2) CGST.

18. We issue the Ruling:

RULING

1. The taxable Value on Tax invoice issued to the Customer shall be arrived after deducting the subject Subsidy from 'System Cost' and GST liability is on the Taxable Value.
2. There shall be no implication of Section 17(2) CGST Act, if taxable value is arrived after subtracting the subsidy amount from the system price.
3. Para 16 of this Ruling may also be read into our Pronouncement

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member (C)