



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING**  
**CT Complex, M.J Road, Nampally, Hyderabad-500001.**  
**(Constituted under Section 96(1) of TGS Act, 2017)**

**Present:**

**Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)**  
**Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)**

**A.R.Com/09/2019**

**Date:14.07.2022**

**TSAAR Order No.48/2022**

Sub: Referring application to Appellate Authority for Advance Ruling in terms of Section 98(5) of TGS Act, 2017 for hearing and decision – Reg.

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M/s. Duet India Hotels (Hyderabad) Private Limited, Sy No.27/1 TO 27/4, Adjacent To Dell, Nanakramguda, Serilingampally, Hyderabad, Telangana, 500 017 (36AADCD1031G2Z7) has filed an application in FORM GST ARA-01 under Section 97(1) of TGS Act, 2017 read with Rule 104 of CGST/TGS Rules, seeking Advance Ruling on the following as under :

1. Whether GST is applicable on electricity and water charges which are being collected at actual by the Lessor from the Lessee?
2. If answer to Q.No.1 is yes, then what is the nature of supply and applicable rate of GST?

**I. Statement of relevant facts submitted by the applicant having a bearing on the question(s) raised:**

1. Ms. Duet India Hotels (Hyderabad) Private Limited ("Applicant/Lessor") is engaged in the business of running hotels. The Lessor is the owner of 'Holiday Inn - Express & Suits Hyderabad' ("the Hotel"). The hotel is managed by the Intercontinental Hotel Group, having its principal place of business in Gurgaon. India. M/s. The Curry House Food's Private Limited ("Lessee") is engaged in the business of operation of restaurants.
2. A Leave and License Agreement ("Agreement") has been entered between the lessor and lessee. As per the terms of the agreement, the lessor has granted licence to the lessee to use the specified area ("Licensed Premises") of the hotel for operating a restaurant by the lessee. For this purpose, lessee has agreed to pay monthly licence fee as a consideration to the lessor.
3. In addition to the license fees, the lessor is also collecting other charges from the lessee towards common charges for security, cleaning of facade and common areas i.e., entrance, etc. as per the agreement. These charges are being collected from the lessee, in the ratio of the area of licensed premises to the total area.
4. Further, the lessor is collecting electricity and water charges as per the actual meter readings as reimbursement. In case of power backup, the power backup charges are also to be paid by the lessee at actual.

5. Presently, the lessor is charging GST @ 18% on license fee Space Rental. Common charges, electricity charges and water charges payable by the lessee. The lessor is issuing separate invoices towards supply of renting of immovable property ('space rental') service and reimbursement of electricity and water charges.
6. However, lessee is not paying the GST charged by the lessor on electricity and water charges on the ground that electricity and water charges are reimbursement of expenses by the lessee to the lessor and these do not qualify as a supply under GST. Further, the lessee has also contended that even if these qualify as supply. the supply of electricity and water are specifically exempted from payment of GST. Therefore, the lessor is filing the present application for obtaining the advance ruling.

**II. Statement containing the applicant's interpretation of law based on the facts, in respect of the aforesaid questions:**

7. That Section 97(2) of the Central goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act'), enables an application to be filed for advance ruling on any of the following questions:
  - a. Classification of any goods or services or both;
  - b. Applicability of a notification issued under the provisions of the CGST Act;
  - c. Determination of time and value of supply of goods or services or both;
  - d. Admissibility of input tax credit of tax paid or deemed to have been paid;
  - e. Determination of the liability to pay tax on any goods or services or both;
  - f. Whether applicant is required to be registered;
  - g. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
8. The lessor submits that issue on which advance ruling is sought in the instant matter relates to determination of the liability to pay tax on collection of electricity and water charges at actuals.
9. The question relating to determination of the liability to pay tax on electricity and water charges is eligible to be posed for advance ruling before the Advance Ruling Authority in terms of Section 97(2)(e) of the CGST Act. Hence, present advance ruling application is maintainable before the Hon'ble Authority for Advance Ruling, Telangana.

**ISSUES REQUIRING ADVANCE RULING:**

10. The applicant submits the following questions for Advance Ruling and their interpretation on the questions as under:
  1. Whether GST is applicable on electricity and water charges which are being collected at actual by the Lessor from the Lessee?
  2. If answer to Q.No.1 is yes, then what is the nature of supply and applicable rate of GST?

**Applicant's understanding:**

11. The Lessor believes that the supply of electricity and water is part of the rental services and thus should attract GST as rental services. However, the lessee does not agree and contends that collection of electricity and water charges at actuals from them is in the nature of reimbursement of expenses and not covered under the definition of supply under Section 7 of the CGST Act. The said electricity and water charges are being paid by the lessor on behalf of the lessee in respect of the licensed premises. Thus, collection of electricity and water charges at actuals from them is nothing but a repayment of the

expenses by the lessee to the lessor. Accordingly, it is not a supply and hence, not liable to GST

12. Further, the lessee also states that lessor is acting as a pure agent for collecting the electricity and water charges at actuals from them and remitting the same to the concerned authorities. Therefore, the said expenses are not incurred by the lessor for provision of renting of immovable property service, hence, not includible in the value of supply of renting of immovable property service.

### **Applicable provisions:**

13. Supply – Section 7(1)(a) of the CGST Act

*'Supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

14. Composite supply - Section 2 (30) of CGST Act,

*"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;*

15. Principal Supply - Section 2(90) of the CGST Act,

*"principal supply" means the supply of goods or services **which constitutes the predominant element of a composite supply** and to which any other supply forming part of that composite supply is ancillary;*

16. Mixed Supply – Section 2(74) of the CGST Act,

*"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.*

17. Section 8 of the CGST Act:

*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**; and*
- (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.*

18. Value of taxable supply - Section 15 of the CGST Act:

*(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) .....*

*(e).....*

*("Emphasis supplied")*

**19. Rule 33 of the CGST Rules, 2017:**

*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.*

*Notification No. 2/2017-Central (Rate) dated 28.06.2017*

20. Notification No. 2/2017 - Central Tax (Rate) dated 28.06.2017 provides the list of exempted intra state supply of goods. Similar notification has been issued under the Telangana State GST Act, 2017 vide Notification No. 2/2017 – State Tax (Rate) dated 29.06.2017.

21. The relevant entries under the above referred Notification have been reproduced below:

<b><i>Sl. No.</i></b>	<b><i>Chapter, Section or Heading</i></b>	<b><i>Description of Goods</i></b>
<b><i>(1)</i></b>	<b><i>(2)</i></b>	<b><i>(3)</i></b>
<i>99.</i>	<i>2201</i>	<i>Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]</i>
<i>104.</i>	<i>2716 00 00</i>	<i>Electrical energy</i>

22. In the present case, an agreement has been entered between the lessor and lessee. As per the terms of the agreement, the lessor has allowed the lessee to use the licensed premises

against the payment of a monthly license fee as consideration. In addition to the monthly license fees, the lessor is collecting the electricity and water charges at actuals as per the meter readings.

23. As per clause 25 of the agreement, the lessee has to pay the electricity and water charges as per the actual meter readings. The relevant extract of the said clause is reproduced below for ready reference.

*"Electricity, Air-conditioning and water charges will be borne by the licensee as per the actual meter readings and rates for the licensed premises (sub Meters/ dual source energy meters to be installed by the licensor for the licensee). Power backup charges to be paid by licensee as per actual."*

24. The lessee states that, in present case, the agreement entered by the lessor is towards supply of service i.e. renting of licensed premises to the lessee for operating the restaurant. The lessor being the owner of the licensed premises receives the electricity and water bills in its name and pays the same to the concerned authorities.
25. Subsequently, the lessor determines the electricity and water charges attributable to the licensed premises as per the sub-meter readings and collects the same from the lessee as reimbursement of expenses incurred by it.
26. Thus, the electricity and water are received and consumed by the lessee directly. Lessor merely pays the amount and then recovers it from lessee. Accordingly, the reimbursement of expenses is not a supply to fall under Section 7(1) of the CGST Act, hence the electricity and water charges are not liable to GST.
27. It is contended that electricity and water charges are not incidental expenses incurred by the lessor for supply of renting of immovable property service, but the said charges are reimbursement of expenses which are incurred by the lessor on behalf of the lessee.
28. As per Section 15(2)(c) of the CGST Act, the value of supply shall include 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.
29. As per Rule 33 of the CGST Rules 2017, 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 the supplier satisfies all the conditions prescribed in the said rule.
30. In the present case, the agreement entered by the lessee with the lessor is towards receipt of renting/leasing of immovable property service, for which lessee is paying license fee as a consideration on monthly basis. Further, the lessor is also discharging applicable GST on the license fee received. As per the terms of the agreement, lessee has to bear the electricity and water charges at actuals in respect of the electricity and water consumed by them for running the restaurant. Accordingly, lessee is paying the electricity and water charges to the lessor who in turn pays the same to concerned authorities as owner of the licensed premises.
31. Thus, the obligation to pay the electricity and water charges is on the lessee. However, lessor being the owner of the licensed premises is receiving electricity & water bills in its name, paying to the concerned authorities and collecting the same from the lessee at actuals as an agent.
32. Thus, all the conditions prescribed under Rule 33 of the CGST Rules are satisfied which are as follows.
- i. The supplier 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.

The lessor has entered into an agreement with lessee for renting of immovable property and collection of electricity and water charges at actuals.

- ii. The supplier 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.  
The lessor being the supplier of immovable property service does not hold any title or ownership in respect of the electricity and water consumed by the lessee.
  - iii. The supplier does not use for his own interest such goods or services so procured.  
The electricity and water being used by the lessee for running the restaurant which are not used by the lessor.
  - iv. The supplier 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.  
The lessor is collecting the electricity and water charges at actuals which are paid to the concerned authorities. The said charges are in addition to the monthly license fee paid by the lessee in respect of renting of immovable property service.
  - v. 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.  
The lessor is collecting the electricity and water charges at actuals from the lessee and remitting the same to the concerned authorities. Thus, the lessor is acting as a pure agent of the lessee for making payment on behalf of lessee to the concerned authorities.
  - vi. 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.  
The lessor is separately collecting the electricity and water charges at actuals from the lessee as reimbursement of expenses and a separate tax invoice is being issued by the lessor for provision of renting of immovable property service.
  - vii. 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.  
In the present case, the electricity and water procured by the lessor on behalf of the lessee are in addition to the supply of renting of immovable property service.
33. Thus, the lessor has satisfied all the conditions prescribed under Rule 33 of the CGST Rules, in respect of pure agent. Accordingly, the lessee states that electricity and water expenses collected by the lessor are reimbursement of expenses which are incurred by the lessor as a pure agent of the lessee and contends that these are not incidental expenses for providing renting of immovable property service by the lessor.
  34. Therefore, Section 15(2)(c) of the CGST Act would not apply in this case. Accordingly, the said expenses would not be includible in the value of supply of renting of immovable property service being provided by the lessor to the lessee.
  35. In this connection, reliance is placed on the judgment given by the Hon'ble tribunal in the case of **M/s. Kiran Gems Private Ltd. Vs. CCE & ST – Surat -I**. In this case, it was held that the electricity charges are supposed to be borne by the service recipient as per the terms of the lease agreement, therefore, merely facilitating the payment of electricity charges and subsequently taking the reimbursement of the same will not form part and parcel of gross value of service of renting of immovable property. Accordingly, the amount collected towards electricity charges was not liable to service tax.
  36. Further, reliance is also placed on the following judgments, wherein, it was held that reimbursement of electricity and water charges at actuals are not liable to service tax.
    - **ICC Realty (India) Pvt. Ltd. Vs. CCE., Pune**
    - **M/s. Hotel Lake View Ashok Vs. CGST CE and CC, Bhopal**

Supply of electricity and water are exempted from payment of GST:

37. Lessee also states that even if the reimbursement of electricity and water charges are treated as supply under Section 7 of the CGST Act, the said charges collected by the lessor are not liable to GST as supply of water and electricity are exempted from payment of GST as per Sl. No. 99 and 104 of the Notification No. 2/2017-Central Tax Rate dated 28.06.2017 respectively.

**III. Personal Hearing:**

The Authorized representatives of the unit namely Sri G. Jagannath, Advocate and V. Ranadeep, CA attended the personal hearing held on 10.03.2022. The authorized representatives reiterated their averments in the application submitted and requested to dispose their application on merits at the earliest.

**IV. The opinion expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax), on the issues raised by the applicant.**

Notification No. 02/2017 dated: 28.06.2017 provides for exemption from tax under CGST Act, 2017 on water (other than aerated, mineral, purified, distilled, medicinal, ionic, battery, demineralized and water sold in sealed containers) at Serial No. 99 under Chapter heading '2201'. Similarly this notification also exempts electrical energy from tax under CGST Act, 2017 by enumerating the same in Serial No. 104 with Chapter heading '2716 00 00'.

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether GST is applicable on electricity and water charges which are being collected at actual by the Lessor from the Lessee?	No
2. If answer to Q.No.1 is yes, then what is the nature of supply and applicable rate of GST?	Does not arise.

**V. The opinion expressed by Sri B. Raghu Kiran, Additional Commissioner, Central Tax on the issues raised by the applicant are as given below.**

It is observed from clause 7 of Article 4 of the license agreement (furnished by the applicant along with application) between the applicant and his customer that the applicant in consideration of the licensor having granted the license to use the licensed premises as set out in the agreement, the licensee shall pay to the licensor a monthly fee as prescribed there under. Apart from the above, as per clause 25 of Article 9 of the agreement, electricity, air conditioning and water charges will be borne by the licensee as per the actual meter readings and rates for the licensed premises. The applicant in his application claimed that he falls under the definition of 'pure agent'. Rule 33 of the CGST Rules, 2017 mandates that the following conditions need to be fulfilled by a supplier to qualify as pure agent.

- (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.

Nevertheless, the application filed before the authority does not contain any mention about the details of the third party or the authorisation by the recipient. For this reason, it is opined that the applicant does not qualify as 'pure agent'.

To decide the applicability of GST on these utility charges, it is relevant to refer to the definition of 'composite supply' which is specified under Sec. 2(30) of the CGST Act, 2017 as under:

*"Sec. 2(30): "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'".*

Further, the concept of composite supply has been expounded by the Central Board of Indirect Taxes and Customs in its Flyer Issued in r/o "Composite Supply and Mixed Supply" as under:

*"Under GST, a composite supply would mean 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.*

*The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such Service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business."*

We find that as per the terms of the agreement, the applicant is supplying a bunch of services in which supplies of leasing is primary supply and supply of electricity and water are Incidental. Thus, espousing the afore-said concept of composite supply to the facts of the present case, it can be decided that leasing of premises would be the main supply and provision of utilities such as electricity and water would be in the nature of incidental/ancillary supplies which are essential in enjoyment of the main supply.

Further, in terms of Sec. 8 of the CGST Act, 2017, the tax liability on 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. Accordingly, in the instant case, GST is applicable on supply of electricity and water charges and the rate applicable to supply of leasing services is applicable to the supply of these utilities.

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
3. Whether GST is applicable on electricity and water charges which are being collected at actual by the Lessor from the Lessee?	Yes
4. If answer to Q.No.1 is yes, then what is the nature of supply and applicable rate of GST?	As discussed above



**Referring the application to Appellate Authority for Advance Ruling:**

Since there is no uniform opinion arrived by the Members of the Authority for Advance Ruling in respect of Questions raised by applicant representing Central Tax and State Tax and they have expressed two different views on the issue raised by the applicant on the applicability of GST on electricity and water charges which are being collected at actual by the Lessor from the Lessee, the application filed by M/s. Duet India Hotels (Hyderabad) Private Limited, Sy No.27/1 TO 27/4, Adjacent To Dell, Nanakramguda, Serilingampally, Hyderabad, Telangana, 500 017 (36AADCD1031G2Z7), is being referred to the Appellate Authority for Advance Ruling for the state of Telangana in terms of Section 98(5) of the CGST/TGST Act, 2017 for hearing and decision on the questions on which advance ruling is sought.

Sd/- S.V. Kasi Visweswara Rao  
ADDL. COMMISSIONER(STATE TAX)

Sd/- B. Raghu Kiran  
ADDL. COMMISSIONER(CENTRAL TAX)

To,  
The Appellate Authority for Advance Ruling for the State of Telangana, Office of the Commissioner of State Tax, Telangana, CT Complex, M.J Road, Nampally, Hyderabad-500001.

//t.c.f.b.o//

Superintendent (Grade-I)