E-SQUARE LEISURE PVT LTD

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 71/2018-19/B- 171, Mumbai, dt. 29/12/2018 Dated **29.12.2018**

Q Questions Before the Authority

- Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?
- In case GST is levied, what is the rate of GST applicable to the said reimbursement of expenses?

F Facts

The applicant proposed to lease a theatre to a lessee (Carnival Films) for a fixed monthly rent over an 18-year term. Apart from rent, it planned to recover electricity charges (including DG and HVAC running costs), potable and RO water charges, property tax and cooking fuel from the lessee at actual cost, with electricity and water measured through sub-meters. The applicant argued that these recoveries were mere reimbursements of costs incurred on the lessee's behalf, not supply, or alternatively were incurred as a pure agent.

H Ruling

Whether GST is levied on reimbursement of expenses from lessee by lessor at actuals	**Yes. Answered in the affirmative.**	Pure agent exclusion under Rule 33 of the CGST Valuation Rules held not available: no authorisation from the lessee to incur expenditure on its behalf, and the utilities were supplied from the applicant's own connections and facilities.
Rate of GST applicable to such reimbursement of expenses	**The rate applicable to the **principal supply**, i.e. renting of immovable property.**	Reimbursements treated as part of a composite supply under s.2(30). The order does not state a separate rate for each item (electricity, water, property tax, cooking fuel). Cooking fuel and property tax were not specifically decided.

The Authority held that **GST is leviable** on the reimbursement of expenses recovered from the lessee at actuals. The applicant failed to establish that it acted as a **pure agent** under Rule 33, because there was no authorisation from the lessee to make payments to third parties and the electricity and water were supplied from the applicant's own installations. The reimbursements form part of a **composite supply** with the renting of immovable property, so GST is payable at the rate applicable to the principal supply.

R Reasoning

The Authority treated renting of the theatre as the principal supply and the recovery of electricity and water as ancillary to it, so the two form a composite supply under section 2(30) and attract the principal supply's rate. It applied Schedule II entry 5(a), which treats renting of immovable property as a supply of services. On valuation, it relied on section 15 of the CGST Act and rejected the pure agent claim under Rule 33 of the CGST Valuation Rules, because the conditions for a pure agent were not met. The applicant had installed the main connection,

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

sub-meters, DG sets and RO system itself, and no authorisation to act as agent was shown. The Authority also drew on GST Flyer No. 4 for the composite supply concept.

P Provisions Relied On

- Section 2(30) CGST Act (composite supply)
- Schedule II, entry 5(a) CGST Act (renting of immovable property as supply of services)
- Section 15 CGST Act (value of taxable supply)
- Rule 33 CGST Valuation Rules, 2017 (value of supply in case of pure agent)
- Section 98 CGST Act and MGST Act (advance ruling)
- GST Flyer No. 4 (illustrative, on composite supply)

! For the Practitioner

Lessors who recover utility costs from tenants at actuals should note that the Authority treats those recoveries as part of a composite supply taxed at the rent rate, and that the pure agent route failed where the lessor supplied the utilities through its own meters and installations without tenant authorisation. The ruling does not settle the rate for each reimbursed item, and it does not decide property tax or cooking fuel separately, since the Authority declined to answer on cooking gas for lack of documents. Its reasoning rests on this lease's facts, so a lessor with separate supply arrangements or a genuine agency authorisation should read the full order before relying on it.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> ara_order_71_2018_maharashtra_eslpl.pdf

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