M/s Keysight Technologies International India Pvt. Ltd., Ground and Second Floor, CP-11, Technology Park, Sector-8, IMT Manesar, Gurugram (GSTIN 06AAFCK4575N1Z0)

Authority for Advance Ruling — Haryana

Advance Ruling No. HAR/HAAR/R/2018-19/39 (In Application No. 39/2018… Dated **25.02.2019**

Q Questions Before the Authority

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

F Facts

The applicant is a 100% export-oriented software and IT-enabled services company that exports its services. It leases part of a premises at IMT Manesar from Agilent under a lease dated 15.07.2014 and a Utilities & Services Agreement dated 25.08.2014, which covers common-area utilities, facility services and electricity. Electricity is supplied both from the grid and from captive DG sets, metered separately, and Agilent has charged CGST and SGST at 9% each on rent and electricity. The applicant also plans to sublet part of the premises to a group company on the same terms.

H Ruling

Is supply of electricity a supply of goods or services?	**Goods, to the extent grid-supplied**	Ruling 7.1(a) is limited to grid supply. The discussion at paras 6.8 and 6.9 treats power supplied through DG sets as a service, taxable to that extent.
Are electricity supply and utilities/leasing separate or composite supplies?	**Separate supplies**	Not naturally bundled and not supplied in conjunction. Neither is principal to the other (paras 6.11 to 6.12).
Classification of grid-supplied electricity for GST	**Exempt under Entry No. 104 of Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017; Tariff Code 27160000**	The ruling text reads 'Entry No. Entry No. 104', which appears to be a typographical repetition. Para 6.13 states DG-set supply forms part of utility services taxable at 18%; the ruling itself does not state that rate.

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

Eligibility to take input tax credit on renting services and electricity	**Eligible for credit on renting services; credit on electricity limited to DG-set supply**	Grid electricity is exempt, so no credit arises on it (para 6.18).

The Authority held that grid-supplied electricity is goods and is exempt under Entry 104 of Notification No. 2/2017-Central Tax (Rate), while power supplied through DG sets is a service. The supply of utilities and the supply of electricity are separate supplies, not a composite supply. The applicant may take input tax credit on the renting services, and credit on electricity is restricted to the portion supplied through DG sets.

R Reasoning

The Authority treated grid electricity as goods, relying on the definition of goods in Section 2(52) and the exemption entry for electrical energy in Notification No. 2/2017-CT(Rate). It found DG-set power to be a service because the applicant does not own or control the DG set and the charges are determined by the lessee, so it is taxable. Applying Section 2(30), it held that the grid supply is not a taxable supply, and that utilities and electricity are neither naturally bundled nor supplied in conjunction, so they are separate supplies. On credit, it applied Section 16(1) and the input definition in Section 2(59) to hold that renting business premises is used in the course of business, while credit on electricity arises only where tax was actually paid, which is the DG-set supply.

P Provisions Relied On

- Section 2(52) CGST Act (definition of goods)
- Section 2(102) CGST Act (definition of services)
- Section 2(30) CGST Act (composite supply)
- Section 2(74) CGST Act (mixed supply), as cited by the applicant
- Section 8 CGST Act (tax liability on composite and mixed supplies), as cited by the applicant
- Section 2(59) CGST Act (input)
- Section 2(62) CGST Act (input tax)
- Section 16(1) CGST Act (input tax credit)
- Section 16(1) and 16(2) IGST Act (zero-rated export of services), as cited by the applicant
- Section 97(2) CGST Act (question raised)
- Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017, Entry No. 104
- Entry 53, List II, Seventh Schedule and Article 246, Constitution of India; 101st Constitution Amendment Act, 2016 (electricity…

! For the Practitioner

This order helps a practitioner in the common case of a tenant that receives grid electricity and utilities under one lease-cum-services agreement, because it confirms that the two can be treated as separate supplies and that grid power is exempt. It also confirms that input tax credit on rent is available to an exporter, while credit on electricity depends on tax actually being paid. It does not bind other states or other fact patterns, and it does not settle how DG-set power should be valued or whether the 18% rate applies beyond what the discussion records.

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 -> har_aar_39_2018-19_25.02.2019_ktiipl.pdf

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