

 सत्यमेव जयते	<b>RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX</b>  <b>NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)</b> Email : <a href="mailto:aaarjpr@gmail.com">aaarjpr@gmail.com</a>	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Satish Kumar Agrawal, Member (Central Tax)
2. Sh. Ravi Jain, Member (State Tax)

**ORDER NO. RAJ/AAAR/05/2021-22 DATED . 01.2022**

Name and address of the Appellant	:	M/s Harish Chand Modi, 39, Bachchrajji ka bagh, 11 <sup>th</sup> A Road, Sardarpura, Jodhpur-342003
GSTIN/ UID of the appellant	:	08ACEPM8844J1Z4
Issues under Appeal	:	Whether reimbursement of electricity expenses, by the lessee to lessor would form part of taxable value ?
Date of Personal Hearing	:	08.12.2021
Present for the appellant	:	Sh. Akash Phophalia, CA and Authorised Representative.
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/05/2021-22 against Advance Ruling No. RAJ/AAR/2021-22/19 dated 21.09.2021

**(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)**

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s Harish Chand Modi, Sardarpura, Jodhpur (**hereinafter also referred to as 'the appellant'**) against the Advance Ruling No. RAJ/AAR/2021-22/19 dated 21.09.2021

### **BRIEF FACTS OF THE CASE**

3. M/s Harish Chand Modi, 39, Bachchrajji ka bagh, 11<sup>th</sup> A Road, Sardarpura, Jodhpur-342003 (herein after referred as appellant) has filed appeal against Ruling issued by Authority for Advance Ruling Rajasthan vide order No. RAJ/AAR/2001-22/19 dated 21.09.2021. The Appellant has submitted appeal in this office in hard copy on 27.10.2021. Fee of CGST Rs. 10000/- and SGST Rs. 10000/- have been paid vide Challan dated 08.10.2021. Brief facts of the case are as under:-

3.1 The appellant is a registered assessee under GST laws having GSTIN – 08ACEPM8844J1Z4. The appellant submitted that he had undertaken construction of its building and decided to give different floors or offices of its building on rent or lease. The appellant had entered into an agreement with its tenant. Appellant had given 5,437 sq feet (3,526 sq. ft on 7<sup>th</sup> floor and 1,911 sq. ft on 6<sup>th</sup> floor) at its premises "Shanti One", Plot No 39, 11<sup>th</sup> A Road, Bachrajji ka Bagh, jodhpur-342003 hereinafter referred as "the said premises", to the tenant on lease for a period 9 years and 11 months divided in 9 terms of 1 year each and 1 term of 11 months. The tenant needs to pay following amount in accordance with the rent agreement as attached herewith, the details of which is as under :-

<b>Nomenclature given by appellant</b>	<b>Amount</b>	<b>Respective clause of rent agreement</b>	<b>Remarks</b>
Rent	2,07,000- 3,21,000/- per month	Clause 3 of rent agreement	The range shown in column 2 of this table is exclusive of GST.
Maintenance charges	Rs 5 per sqft or any other tax on rent	Clause 3 of rent agreement	Inclusive of GST
Interest	18% p.a. from the 5 <sup>th</sup> day of subsequent of month till the date of payment of rent	Clause 4 of rent agreement	It is payable only if tenant fails to pay rent in time and there is delay in payment of rent.
Security Deposit	Rs 6,20,000/-	Clause 5 of rent agreement	Interest free security deposit. Refundable on completion / termination of

			lease agreement.
JVVNL Electricity charges	As per actual	Clause 8 (g) of the rent agreement	GST, if chargeable, shall be payable extra
DG Electricity charges	Rs 10,000/- per month as fixed charges and Rs 18/- per unit of electricity consumed.	Clause 8 (h) of the rent agreement	GST, if chargeable, shall be payable extra

3.2 It has been mentioned by the appellant that

- A transformer is installed at the said premises to convert HT (High Transmission) to LT (Low transmission).
- A private DG is also installed at the said premises.
- LT Power and DG Power are then transmitted through power distribution panel.
- Every tenant is having separate installed electricity sub-meters.
- Transmission of electricity to each tenant is recorded through sub-meters installed at the respective tenant. The sub-meter keeps proper record of electricity consumption viz electricity consumption through DG set and electricity consumption through meter installed by JVVNL and charges recovered from the tenant on the basis of formula mentioned as under.

Particulars	Amount
Electricity bill for the period (in value)	X
Total Electricity consumption for the period (in units)	Y
Electricity <u>cost per unit</u> for the said period	$Z=X/Y$
Electricity consumption by tenant (as per sub-meter reading related to electricity supply through meter of JVVNL)	P
Electricity charges <u>reimbursed</u> by tenant	$Q=Z*P$

3.3 The appellant has mentioned sample electricity bill and the manner of reimbursement of electricity charges by tenant.

S. No.	Details	Bill Amount (Rs.)
1	Electricity Charge	36,214.20
2	Fixed Charge	20,250.00

3	Demand Surcharge	
4	Power Factor Surcharge (+) Incentive (-) /Shunt capacitor (3%)	108.64
5	Unauthorized Consumption Amount	
6	CT/PT/Meter Rent	
7	Transformer Rent	
8	Other	52.29
9	Rebates (-) (i) Voltage	
	(ii) Solar/Sprinkler/Rural Rebate/Pre-Paid Meter Rebate	
10	Total Nigam Dues(Sum of 1 to 9)	56,625.13
11	Electricity Duty	1,636.80
12	Water Conservation Cess	409.20
13	Urban Cess	613.80
14	Other Nigam Dues	-548.95
15	Other Electricity Dues	
16	Other Water Conservation Cess	
17	Other Urban Cess	
18	Other LED/Deferred Deposit	
19	Adjusted Amount (Code)	
20	Total Due Date Amount (Sum of 10 to 19)	58,735.98
21	Arrear Amount	
22	Deferred Amount (Active Month)	
23	State Gov. Bearer Amount (i) Tariff Subsidy	
	(ii) HailStorm/Other Subsidy	
24	Total Amount Before Due Date(SNO 20+21-22-23)	58,736.00
25	LPS	1,121.52
26	Total Amount After Due Date(Sum of 24 and 25)	59,858.00
	Total Units Consumed (KWH)	4,092.00
	Unit Cost per KWH (Calculated) (Rs)	14.63
	Units consumed by the tenant (KWH)	3,588.00
	Bill Amount Apportioned to tenant (Rs)	52,485.46

3.4 The appellant has not provided a separate electric meter to the lessee in the instant case and as such the lessee cannot make the payment of electric charges directly to the electric company. In such circumstances the applicant makes the payment to the electric company and in-turn collects such charges from the lessee. To make the system work, the appellant has installed sub-meters and they collect

the charges of the electric power used by the lessee as per the usage of power ascertained from such sub-meter.

3.5 The appellant has filed application before Advance Ruling Authority to sought ruling whether reimbursement of electricity expenses, by the lessee to lesser (appellant) would form part of taxable value?

3.6 Advance Ruling Authority has observed that in the instant case, the applicant had not acted as "pure agent" and invoice/bill/memo/document issued in relation to collect electricity charges or incidental charges, maintenance charges, are in relation to composite supply of principle service of renting of immovable property as any incidental charges or expenses in respect of supply of service shall form part of value of taxable supply.

4 Aggrieved by the order, the appellant has filed appeal before this forum on following grounds.

4.1 Appellant submitted that ADVANCE RULING NO RAJ/AAR/2021-22/19 is bad in law and bad on facts due to the following –

<p align="center"><b>Gujarat Narmada Valley Fertilizers and Chemicals Ltd [2020] 28 Taxlok.com 124 (AAR-Gujarat)</b></p>	<p align="center"><b>In our case</b></p>
<p>Para 14</p> <p><u>..... The includible charges are to be examined in terms of the language employed in the statute vis-à-vis the terms and conditions of the agreement and would depend on case to case basis. Thus, the question to the effect whether incidental charges are includible in the value of supply is not answerable in general terms.....</u></p> <p>Para 15</p> <p><u>.....In view of such an agreement, it can be said that the amount charged towards internal infrastructure (if any separately charged) would be includible by virtue of <i>the clause 'any amount charged for anything done by the supplier in respect of the supply of goods or services or both'</i>. Had a similar clause been incorporated in the agreement regarding 'electricity charges', the same would have been</u></p>	<p>The interpretation taken in the parallel case is applicable in verbatim to our case as the facts are similar. In our case also no such words '<u><i>any amount charged for anything done by the supplier in respect of the supply of goods or services or both'</i></u> have been used with electricity charges and hence the learned members had grossly erred in ignoring such interpretation and holding that GST is payable on electricity charges, consequently the order passed was bad in law and facts.</p>

<p><i>includible</i>. However, there is no such clause regarding electricity charges. Thus, the tone and tenor of the agreement clearly demonstrates that the value for offering the space on rent has been fixed at Rs. 20,80,848/-. The agreement does not make any provision for the supplier to make any incidental expense or charge any other amount in respect of such supply of space on rent. Thus, the value for the purpose of renting of immovable property, in the instant case, would be the amount agreed upon for the act of renting of such property.....</p>	
<p>Para 15.1</p> <p>.....The charges towards electricity is covered under clause 9 of the agreement which is independent of clause 3 and the same stipulates that "the Govt. of India" shall pay all charges in respect of electric power, Air-conditioning charges, light and water used along with the applicable taxes thereon.....i) <i>The phrase 'shall pay all charges' indicates a mandate to the effect that the Govt. of India are to pay directly to whomsoever concerned. This is so because the phrase does not say that they shall pay to the supplier. The words to whom the payment is to be done are missing in the agreement and as such the sentence is to be constructed by applying linguistic principles which would mean that the Govt. of India shall pay the charges to the concerned supplier.</i></p> <p><i>ii) The words 'electric power' make it all the more clear that the charges in respect of electric power have to be made.</i></p> <p><i>iii) The word 'used' makes it clear that the charges are in respect of actual usage of electric power.</i></p> <p>The above indicates that the applicant has cast an onus on the lessee to pay the charges in respect of the electric power used by them directly to the electricity company.</p>	<p>In our case also clause 3, 8(g) and 9(c) clearly stipulates the same intention which was grossly ignored by the learned members and hence the decision passed was bad in law and fact.</p>
<p>Para 15.2</p> <p>In view of such an agreement, it cannot be said that the <i>electricity</i></p>	<p>This finding is squarely applicable to our case which had been wrongly ignored by the learned members of authority for advance ruling</p>

<p><u>charges would be covered by Sec. 15(2)(c) of the CGST Act, 2017 for the sole reason that the rate for renting of premises has been fixed at an amount and the electricity charges are to be borne by the lessee as per the actual usage of electric power by them in terms of the agreement.</u> Accordingly, the said amount would not be includible in the value of supply. It is reiterated here that the decision would apply to this specific agreement in as much as the clauses of the agreement are specific to the effect that the lessee would bear the electricity expenses at actual and the value of renting of the immovable property is a fixed amount specified at clause 3 which becomes the value of supply in terms of the statutory provisions.</p>	<p>Rajasthan and hence the decision passed was bad in law and on fact.</p>
<p>Para 16</p> <p>.....the applicant has not provided a separate electric meter to the lessee in the instant case and as such the lessee cannot make the payment of electric charges directly to the electric company. In such circumstances the applicant makes the payment to the electric company and in-turn collects such charges from the lessee. <u>To make the system work, the applicant have installed sub-meters and they collect the charges of the electric power used by the lessee as per the usage of power ascertained from such sub-meter.</u> Two aspects emerge from the above scheme of arrangement:</p> <ul style="list-style-type: none"> <li>- <i>The applicant has not obtained separate meter from the electric company to facilitate the direct payment of electricity charges by the lessee to the electric company.</i></li> <li>- <i>In absence of separate meter, the applicant has installed sub-meter and collects the charge of electric power used by the lessee from the lessee and in-turn pays the same to the electricity company.</i></li> </ul> <p>Para 16.1</p> <p>The above makes it amply clear that the lessee was supposed to pay the electricity charges directly to the electric company as per the actual usage in terms of the agreement.</p>	<p>The facts are similar to our case but the learned members had grossly erred in not interpreting the agreement as "pure agent" for reimbursement of electricity expenses and merely focused on the terms "reimbursement" and "pure agent" ignoring the fact that intent of the agreement speaks louder than the words used therein and hence the order passed was bad in law and facts.</p>

However, for the **failure of the lessor to obtain a separate electric meter for the premises rented to the lessee, they have mutually agreed to collect the electric charges on the basis of actual usage based on the sub-meters** and onward payment to the electric company.....With a purpose to ensure such actual payment, the lessor i.e. the applicant has installed a sub-meter for the lessee. Thus, it is purely a reimbursable expense made by the lessee which is collected on actual usage of the electric power. Secondly, if at all the amount was not be charged on actual usage basis, it would have been all the more easier for both the parties to fix a certain amount towards electricity charges in the agreement itself.....

4.2 Appellant has submitted that Ld. Members were not justifying in concluding that "GST is payable on electricity charges recovered" ignoring the judgment passed in "Gujarat Narmada Valley Fertilizers and Chemicals Ltd [2020] 28 Taxlok.com 124 (AAR-Gujarat)" and without differentiating the facts wrongly concluded that the facts of the cited case laws were different from the present case.

### **PERSONAL HEARING**

5. A virtual hearing in the matter was held on 08.12.2021. Sh. Akash Phophalia, CA and Authorized Representative of the appellant has attended hearing on 08.12.2021. They reiterated the submissions already made under grounds of appeal.

### **DISCUSSION AND FINDINGS:**

6.1 We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR, Rajasthan, written as well as oral submissions made by the authorized representative(s) of the appellant, at the time of personal hearing held on 08.12.2021.

6.2 We observe that only issue to discuss by this forum in this appeal is whether the act of recovering electricity expenses by the appellant is covered under the category of pure agent or Not?

6.3 We find that provisions of Rule 33 of the CGST Rules, 2017 are related to pure agent, which are being reproduced here;

**"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 authorization 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."

6.3.1 Authority for Advance ruling has observed that in the instant case there is no clear authorization made by the lessee on which the supplier (lessor) acts as a pure agent of the recipient of the supply, when he makes the payment to the third party. The rent agreement itself not become an authorization as nowhere in the said agreement has the 'reimbursement' term been mentioned. Further applicant (lessor) does not enter into a contractual agreement with the recipient (Lessee) of supply to act as pure agent to incur expenditure or costs in the course of supply services. Hence, the act of working as a 'pure agent' has not been phrased out. Thus, reimbursement of electricity expenses had not been made on actual basis, by the lessee to lesser as it had been collected in advance with rent and further adjusted by raising the invoice/bill/memo/document by the lessor. Therefore, in the instant case, the so called reimbursement of electricity expenses would form part of taxable value in term of clause (c) subsection (2) of section 15 of the CGST Act, 2017.

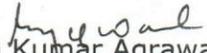
6.3.2 On perusal of agreement given with appeal memo, we find that Clause 8 (g) and (h) are related to electrical expenses. According to said clauses, only lessee is required to pay electric expanses to appellant. There is no authorization by the lessee to appellant to which third party, electric expenses shall be payable, therefore, condition No. (i) given under Rule 33 of CGST Rules, 2017 does not get satisfied.

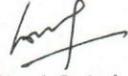
6.3.3 Further, from the facts of the case, we agree with the observation of the Authority for Advance Ruling, Rajasthan in the instant case that reimbursement of electricity expenses had not been made on actual basis, by the lessee to lesser as it had been collected in advance with rent and further adjusted by raising the invoice/bill/memo/document by the lessor. Further, the appellant has failed to establish themselves as a pure agent. Therefore, in the instant case, the so called reimbursement of electricity expenses would form part of taxable value in term of clause (c) subsection (2) of section 15 of the CGST Act, 2017.

6.3.4 Accordingly, we hold that appellant is not working as pure agent.

6.4 The appellant has stressed upon Ruling given by the Authority for Advance Ruling Gujarat in the case of M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited. In this regard, we are of the opinion that these orders have not been passed by the higher forum than the present one; therefore, the same are not being considered.

7. Accordingly, appeal filed by the appellant is disposed off in above terms.

  
(Satish Kumar Agrawal)  
Member (Central Tax)

  
(Ravi Jain)  
Member (State Tax)

**SPEED POST**

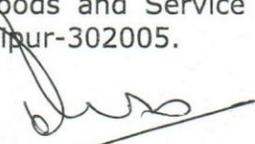
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Jodhpur-342003

F. No. IV (16)05/AAAR/RAJ/2021-22/ 132

Date. 17 . 01 .2022

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Commissioner, CGST Commissionerate, Jodhpur.
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. Guard File.

  
Superintendent