

Electricity and water charges reimbursed by licensee liable to GST – Maharashtra AAR

22 December 2021



Summary

The Maharashtra Authority for Advance Ruling (AAR) in a recent ruling has held that the electricity and water charges reimbursed by the licensee to the applicant (licensor) at actuals is liable to GST. The AAR observed that without provision of such services the licensee cannot run its business. Therefore, the amounts reimbursed towards electricity and water charges to the licensor along with the rent shall be a part of consideration towards renting services.

Facts of the case

- The applicant¹ has entered into a Leave and License Agreements with licensee for licensing space for use and occupation for an agreed licensee fee.
- The monthly electricity charges for use and consumption of electricity by the licensee are paid by the applicant. The applicant raises debit notes on the licensee for reimbursement of electricity charges so paid by the licensor at actuals.
- The applicant has also installed water meter for supply of water to all licensees and pays water bills and apportions the charges at actual by raising bill of supply on licensees for reimbursement based on floor space occupied.
- The applicant sought an advance ruling before the Maharashtra AAR to understand whether the electricity charges and water charges paid by the applicant as per meter reading and collected from the recipients at actual on reimbursement basis is liable to GST and whether the applicant shall be considered as a pure agent?

Maharashtra AAR observations and ruling²:

- **Mandatory provision of essential services:** The variable amount of electricity and water charges (at actuals), paid by the licensee is for effective enjoyment of the rented premises without which the occupation of the premises could not be possible.

Thus, the provision of essential services is mandatory on licensor.

- **Amounts reimbursed are part of consideration:** Without provision of such utility services like water and electricity, the licensee cannot run its business. Therefore, amounts towards electricity/water charges reimbursed by licensee to licensor shall be a part of consideration received in relation to renting of immovable property services by the licensor.
- **Value of supply to include incidental expenses:** The electricity and water charges recovered as reimbursements even if at actuals have the nature of incidental expenses in relation to renting of immovable property service. Therefore, such charges are includible in the value of supply and shall be considered as transaction value for the purpose of levy of tax.
- **Conditions of being pure agent not fulfilled:** As the electricity meter and water meter are in the applicant's name therefore, these supplies are on applicant's own account and is for effective enjoyment of premises. Making payment for such supplies is the responsibility of the applicant and it is not paying on behalf of the licensee. Further, there is no authorisation obtained by the applicant from the licensee to act as a pure agent and to make payment to third parties on its behalf. Thus, the applicant does not act

¹ M/s Indiana Engineering Works (Bombay) Pvt. Ltd.

² Maharashtra AAR order No. GST-ARA-120/2019-20/B-114 dated 16 December 2021

as a pure agent of the licensee in this respect.

Our comments

On a similar issue, earlier the Gujarat AAR³ had held that landlord does not have to pay GST on electricity or incidental charges recovered from tenants, in addition to rent as per lease agreement for renting of immovable property since the said amount would not be includible in the value of supply.

It is pertinent to note that electricity has been kept outside the purview of GST by way of exemption⁴. Further, the Gujarat High Court⁵ had quashed the levy of GST on ancillary services provided by electricity distribution companies to consumers⁶ as being ultra vires to the provisions of GST law. Therefore, though the present ruling by the Maharashtra AAR is likely to impact the real estate sector and the Resident Welfare Associations (RWA), we may see rise in litigation on the subject matter and is likely to be challenged further.

³ Gujarat Narmada Valley Fertilizers & Chemicals Ltd.

⁴ Notification no. 02/2017 –Central Tax (Rate) dated 28.06.2017 and Notification no. 12/2017-CT(Rate) dated 28.06.2017

⁵ in the case of Torrent Power Ltd.

⁶ vide Circular No. 34/8/2018-GST dated 1 March 2018

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle, L 41,
Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

BENGALURU

5th Floor, 65/2, Block
A, Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T+91 80 4243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 4338 000

CHENNAI

9th Floor, A Wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division,
Teynampet,
Chennai – 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000,
Michigan Avenue,
Doon Express Business
Park, Subhash Nagar,
Dehradun - 248002
T +91 135 2646 500

GURGAON

21st Floor,
DLF Square, Jacaranda
Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

7th Floor, Block III,
White House,
Kundan Bagh,
Begumpet,
Hyderabad - 500016
T +91 40 6630 8200

KOCHI

6th Floor,
Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road,
Andheri East,
Mumbai - 400069
T +91 22 6176 7800

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor,
Unit No 309-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at gtbharat@in.gt.com



Follow us @GrantThorntonIN

© 2021 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.