

## Recovery of common area electricity charges by an RWA from the apartment residents are liable to GST- Haryana AAR

15 September 2022



## Summary

The Haryana Authority for Advance Ruling (AAR) held that Goods and Services Tax (GST) is leviable on the common area electricity (CAE) charges collected by the Resident Welfare Association (RWA) from the residents of the apartments/complexes. The AAR relied on the ruling passed by the Karnataka AAR wherein it had been held that the value of electricity charges separately shown in the invoices is to be added towards consideration shown towards the upkeep and maintenance service and accordingly, is liable to GST. The Haryana AAR held that GST is applicable on the charges collected, irrespective of on actual basis or with a margin.

## Facts of the case

- The applicant<sup>1</sup>, an RWA, registered under GST, is engaged in providing maintenance services and other services to its members including managing facilities in apartments/complexes, organising events, safeguarding the rights of residents of the RWA.
- The applicant has received a sanction for the single point supply connection for distribution of electricity to society members, as per the electricity regulations<sup>2</sup>.
- The applicant submitted that the common electricity meter (CEM) for the entire complex is in the name of the applicant. It has installed separate sub-meters for individual flat owners for units consumed towards the CAE. The distribution of electricity within the apartment complex is to be owned and managed by the applicant. The electricity board issues the invoice in the name of the applicant, who in turns, raise invoices in the names of individual flat owners. The applicant contended that GST would not be

applicable on the CAE charges recovered by the applicant on the actual basis from the individual users.

- The applicant has a view that it is an entity entrusted with the function of distribution of electricity through the scheme of the Haryana state government, therefore, qualifies as an electricity transmission or distribution utility and accordingly, exempt from GST. Further, the applicant relied on the circular clarifying that no GST would be levied on electricity charges collected under other statues from individual flat owners.
- Therefore, the applicant has sought advance ruling to seek clarity on applicability of GST on the CAE, on actual basis or with a margin, from the residents of the apartment complex.

## Haryana AAR observations and ruling<sup>3</sup>

- **Applicability of GST on common charges recovered:** The AAR relied on the ruling passed by the Karnataka AAR<sup>4</sup> wherein it had been held that the value of electricity charges separately shown in

<sup>1</sup> M/s The Close North Apartment Owner's Association

<sup>2</sup> Haryana Electricity Regulatory Commission (Single point supply to Employer's Colonies Group Housing Societies and Residential or Commercial cum Residential Complex of Developers) Regulations

2013("hereinafter referred to as Electricity Regulation 2013")

<sup>3</sup> HR/ARL/20/2021-22 dated 31 August 2022

<sup>4</sup> in case of Prestige South Ridge Apartment Owner's Association, KAR/ADRG 42/2019 dated 17 September 2019

the invoices is to be added towards consideration shown towards the upkeep and maintenance service, and accordingly, is liable to GST. The views of the Haryana AAR are like the above AAR, and accordingly, it is concluded that an amount recovered by the applicant from its members is liable to GST at the rate of 18%.

## Our comments

In case of Prestige South Ridge Apartment Owners' Association, the Karnataka AAR had held that the applicant is not involved in the supply of electrical energy but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments. Further, even if the electricity bill is distributed to all the members, it is not the consideration for the supply of electrical energy to the members, but the value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.

Similarly, the Uttarakhand AAR in case of M/s Antara Purukul Senior Living Limited<sup>5</sup> had held that the electricity charges paid to the electricity supply authority for the power consumed towards common area and recovered from residents on actual cost basis is liable to GST. Further, electricity is an input to provide the services of maintenance and facilities to the community, hence the electricity is used by the applicant for furtherance of his own interest. Therefore, it does not qualify as a pure agent. The present ruling is also in line with the above rulings.

Even, the Maharashtra AAR<sup>6</sup> had upheld the GST liability on the licensor collecting amount of electricity charges from the tenants on actual basis, refusing to accept them as pure agents. At the same time, the Gujarat AAR<sup>7</sup> had accepted the status of the landlord as a pure agent and held that no GST was payable.

However, the logic that electricity is outside the purview of GST would counter these advance rulings. A due clarification from the government is awaited to avoid unwarranted litigation on this issue.

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<sup>5</sup> UK-AAR-06/2021-22 dated 12 November 2021

<sup>6</sup> Indiana Engineering Works (Bombay) Private Limited

<sup>7</sup> Gujarat Narmada Valley Fertilizers & Chemicals Limited

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