

Allocation of salary of HO employees to its Branch offices exigible to GST - Maharashtra AAAR

20 January 2022



Summary

The Maharashtra Appellate Authority for Advance Ruling (Maharashtra AAAR) has held that the activities of providing facilitation services by Head office (HO) to their branch offices/units would be treated as 'supply of services by the HO to its branch offices/units. Further, the HO is using all its human resources to facilitate the operational requirement of branch offices, thereby, providing the facilitation services. Therefore, the allocation and recovery of any amount including its employee's salary cost from the branch office/units will be subject to the Goods and Services Tax (GST).

The AAAR opined that the value declared in the invoice shall be deemed to be the 'open market value' of the services for the valuation purpose. Further, the HO is not entitled to avail and utilise the credit of tax paid for the common input services received by it on behalf of its branch offices/units.

Besides, the AAAR stated that the Input Service Distributor, which intends to distribute the credit of the tax paid on the common input services has to mandatorily register itself as an ISD. Therefore, if the HO intends to distribute the credit of tax paid on account of the availment of common input services on behalf of the branch offices/units, registration is required as an ISD, apart from the normal supplier's registration.

Facts of the case

- The Appellant¹ is engaged in the manufacture and sale of a variety of diesel engines, parts thereof, and related services and undertakes all day-to-day activities.
- The Appellant has its presence across various states in India through its manufacturing/service/sales units.
- The costs incurred by HO/units for procurement of common input services are allocated and recovered proportionately from each of the recipient units.
- The Appellant filed an application wherein the Maharashtra AAR² ruled that availment of ITC on common input supplies on behalf of other units qualifies as supply and attracts GST. The assessable value shall arrive in terms of Rule 30³. Further, the appellant is required to obtain registration as an ISD.
- The Appellant had filed the present appeal in relation to the necessity of obtaining registration as an ISD, determination of

assessable value for facilitation of common input services.

AAAR observations and ruling⁴:

- **GST Law provides a wide connotation for services:** In view of the scope and coverage of the term 'services', the facilitation services, by way of availment of the common input services by HO on behalf of its branch offices/units would be covered under services. Hence, it would be treated as supply under GST.
- **Common input services are being used or consumed by the branch office/units:** In the instant case, the common input services received by the HO are being used or consumed by the branch office/units and not by the HO. Therefore, HO is not entitled to avail and utilise ITC on the common input services received by it on behalf of the branch office/units.
- **Mandatory registration as an ISD:** The contention of the appellant that HO itself will be availing and utilising the credit of tax

¹ M/s. Cummins India Ltd

² GST-ARA-66/2018-19/B-162 dated 19 Dec 2018

³ of the CGST Rules, 2017

⁴ MAH/AAAR/AM-RM/01/2021-22 dated 21 Dec 2021

paid by it on the said common input services for selling off its own GST liability does not hold water, and hence, is not tenable. ISD is the only option available to pass on the credit of tax paid by the HO on the availment of the common input services on behalf of their branch offices/units.

- **Contention that the HO is bound to operate with the dual registrations is erroneous and specious:** By way of exercising the ISD option available, HO will be in a position to recover the GST amount paid by it to the third-party vendors. Hence, the contention of the appellant that HO is bound to operate with the dual registrations is erroneous and specious.
- **Passing on only credit procured by HO on behalf of the branch offices/units:** Under the mechanism of ISD, the HO is eligible to pass on only such credit of tax paid which it has procured from third-party vendors on behalf of the branch offices/units. It does not cover the credit of tax pertaining to such input services, which have been exclusively used by the HO to provide the impugned facilitation services to the branch offices/units.
- **Value of tax invoice as the open market value of the services:** The assessable value of the services provided by the HO to the branch offices/units can be determined as per Rule 28,⁵ which provides that the value of the tax invoice will be deemed as the 'open market value' of the services.
- **Allocation and recovery of any amount, including employee salary cost from the branch offices/units will be subject to GST:** The employees of the HO are working at the behest of the HO, and not at the behest of the branch offices/units. The HO is using

all its human resources to facilitate the operational requirements of the branch offices/units by way of procuring common input services on behalf of the branch offices/units. Therefore, facilitation services by way of allocation and recovery of any amount including its employee's salary cost from the branch offices/units will be subject to GST. The facilitation services are not affected between the employees and the employer, but between the HO and branch offices/units, which are distinct units⁶, and the same is taxable under GST.

Our comments

The matter has been subject to extensive litigation under the GST since its inception. After Karnataka AAAR's⁷ ruling in case of M/s. Columbia Asia Hospitals Pvt. Ltd., this is another important ruling on the subject matter providing a similar view. Even the Haryana AAR⁸, in the case of Tupperware India Pvt. Ltd. had held that the services supplied by the HO to other units by way of performing activities shall be leviable under the GST regime.

While the Karnataka AAAR had not discussed the valuation aspect, the present ruling has affirmed the 'open market value' of the services for the valuation purpose.

Also, it is expected from the government to provide suitable clarification in this matter to avoid creating unnecessary chaos for taxpayers.

⁵ the second proviso to clause (c) of Rule 28 of the CGST Rules, 2017

⁶ in terms of Section 25(4) of the CGST Act, 2017

⁷ KAR/AAAR/05/2018-19 dated 12 Dec 2018

⁸ AAR No. HAR/HAAR/R/2018-19/59 dated 28 August 2020

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