

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8th floor, 'H' wing Mazgaon, Mumbai- 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAACG5176C1ZT
Legal Name of Applicant	E-SQUARE LEISURE PVT LTD
Registered Address/Address provided while obtaining user id	132A ESQUARE University Road, Pune Maharashtra - 411016
Details of application	GST-ARA, Application No. 71 Dated 23.08.2018
Concerned officer	Dy. Commr. S.T.(E-201), PUN-VAT-E-201, PUNE
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	The Company intends to enter in to a contractual agreement of renting of immovable property with the lessee for leasing of the immovable property for rent. Apart from rent, E-Square also plans to collect expenses of electricity, water charges, property tax and cooking fuel from the lessee.
Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 02 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by E-SQUARE LEISURE PVT LTD., the applicant, seeking an advance ruling in respect of the following questions :

1- *Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?*

2- *In case GST is levied what is the rate of GST applicable to said reimbursement of expenses.*

2. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

3.1 STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

- The application is being filed by 'E-SQUARE LEISURE PRIVATE LIMITED' (hereinafter referred as 'E-square' or 'Applicant' or 'the Company'); having GSTIN 27AAACG5176C1ZT and is engaged in the business of exhibition and business services, accommodation in hotels, inn, guest house, club or camp site, etc services, and restaurant services; submits that,
- The Company intends to enter in to a contractual agreement of renting of immovable property with the lessee for leasing of the immovable property for rent. Apart from rent, E-Square also plans to collect expenses of electricity, water charges, property tax and cooking fuel from the lessee.
- Further, the aforesaid electricity, water charges, property tax and cooking fuel are expected to be recovered from lessee at actual in accordance with the contractual agreement.
- We submit that, the Lessor has fixed the value of renting of property by way of contractual agreement between them. Apart from that, whatever expenses incurred are recovered at actual (i.e. apportioned on the basis of usage as may be agreed) hence could vary from month to month. Given this, it could be construed that there is no supply of goods or services from the lessee to lessor.
- We further submit that; as per Rule 33 of CGST Rules, 'Determination of Value of Supply Rules', reimbursements are not liable to GST if the same are incurred in the capacity of 'pure agent'.
- In view of the above, the issue for determination before the Authority for Advance Ruling(ARA) is :

Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actual?
In case GST is levied, what is the rate of GST applicable on the said reimbursement of expenses.

3.2 STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

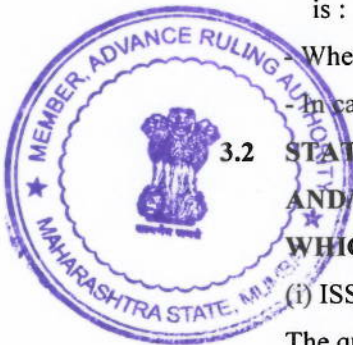
(i) ISSUE FOR DETERMINATION -

The question/ issue before Your determination is -

- Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?
- In case GST is levied what is the rate of GST applicable to said reimbursement of expenses.

(ii) OUR SUBMISSIONS

- We hereby submit that, the case under consideration is covered under clause (e) of Section 97(2) of the CGST Act called as '*determination of the liability to pay tax on any goods or services or both*;
- At the outset, we would like to submit that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act.
- We request you to consider the following submission



Reimbursement of expenses may not constitute supply from Lessor to lessee as defined under Section 7 of the CGST Act.

- GST is levied on Supply as defined under Section 7 of the CGST Act. Supply includes:
 - a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
 - b)...
 - c)...
 - d) ...
- We submit that, to qualify a certain transaction as supply the condition given below are required to be satisfied
 - A. Supply includes all forms such as sale, transfer, barter etc. of goods and service.
 - B. Said transaction shall be made or agreed to be made for a consideration
 - C. Two or more person shall be involved (By one person to another)
 - D. *in the course or furtherance of business*
- Hence, it is essential to analyse whether all the conditions as above are satisfied in case of reimbursement of expenses
- Reimbursement is nothing but to repay for certain expenses incurred by the person on behalf of other. e.g. in case of electricity the supply of transmission is from the State Electricity Board hence it could be construed that Lessor has not supplied any goods or services but incurred certain expenses in relation to property which lessee is liable to pay.
- Erstwhile, in Finance Act, 1994 there were plethora of judgement wherein it was held that reimbursement of expenses is not incurred towards services rendered as value for services is already charged but said expenses are incurred by service provider on behalf of their client.



No	Case Law	Judgement
1	Rolex Logistics Pvt. Ltd. [2008 (9) TMI 123 CESTAT Bangalore),	It was held that, ' reimbursement of expenses are not for services rendered but expenditure incurred on behalf of client by service provider. Gross amount for service rendered means only for services rendered. It also interpreted 'reimbursement' as payments made on behalf of service recipient by service provider in the course of rendering services. The gross receipt for the services rendered means only for the services rendered'.
2	Anandram developers Pvt. Ltd [2017 (6) G.S.T.L. 75 (Tri. - hennai)]	Held that, ' <i>the electricity charges and diesel charges are seen included in the total value of taxable service to arrive at the demand. Such reimbursable expenses cannot be included in the gross value of taxable services as held in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra) and ICC Reality (India) Pvt. Ltd. (supra). Applying the ratio laid down in the above judgments, we hold that the electricity and diesel charges have to be deducted from the gross value to arrive at the net value of taxable services. For this limited purpose, the matter will be required to be remanded to the adjudicating authority who shall re-quantify the demand of service tax after deducting the electricity and diesel expenses.</i>
3	S. K. Education Pvt. Limited [2017 (6) G.S.T. L. 70 (Tri. - Del.)]	<i>In view of the above discussions, we find that there is no justification for levy of service tax on the amounts received by the assessee towards royalty, cost of manuals and certificates as well as advertisement reimbursement charges. Hence, the demand of service tax for the entire period from 1-7 2003 till 30-6-2012 is required to be set aside. In view of the above, the appeal filed by the assessee is allowed and the appeal filed by Revenue is dismissed.</i>
4	Sercon India Pvt. Ltd. [2013 (30) S.T.R. 454 (Del.)]	Having examined the matter at some length, we find that, prima facie, the issue of levying and charging service tax on reimbursable expenditure has been settled by the decision of this Court in Intercontinental Consultants & Technocrats Pvt. Ltd.

	(supra). Therefore, prima facie, the amount of 14.22 crores, which has been actually received by the petitioner from its clients towards reimbursement of expenses, could not be the subject matter of service tax.
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- Also, we submit that, what the Lessor recovers from the Lessee by way of reimbursement of water charges, electricity charges, taxes etc, do not have the character of revenue or value addition in the hands of the Lessor.
- Also, it is important to note that water, electricity charge, taxes etc. has a co-relation with exact quantity of water or electricity consumed, hence, it is variable on the basis of usage whereas component of rent is always fixed by way of contractual agreement. (for example, rate of water tax/charge levied for hospitals differs from rate chargeable for commercial or industrial users).
- Given the aforesaid, it could be constructed that reimbursement is not covered under the definition of supply hence GST is not applicable.

Without prejudice to aforesaid submission reimbursement of expenses by the lessor to lessee can be qualified as expenses incurred by the lessor as a 'Pure Agent'.

- Without prejudice to aforesaid we submit that, even said reimbursement construed as Supply as defined under Section 7 of the CGST Act, GST could not be levied if expenses are incurred by the service provider on behalf of service recipient in the capacity of 'Pure Agent'.
- As per Rule 33 of Determination of Value of Supply Rules, if reimbursement qualified as expenditure incurred in the capacity of 'pure agent, will not be considered in the value for levy of GST.
- As per Section 2(5) of the CGST Act, "agent" means a person, *including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;*
- Further, for qualifying a pure agent, there are 4 conditions which required to be satisfied unanimously. The said conditions with detailed elaboration is discussed below.



No	Conditions	Remarks
1	<i>The contractual agreement by the supplier with the recipient to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both."</i>	The contractual agreement is entered in between lessee and lessor for renting of property.
2	<i>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</i>	Amount of electricity, water charges, property charges etc are apportioned on the basis of usage.
3	<i>the pure agent does not use the goods or services so procured in his own interest."</i>	The expenses specified are incurred only for lessee.
4	<i>Neither holds nor intends to hold any title to the goods or services so procured or supplied as pure agent of the recipient of supply</i>	Refer Para 2.5-2.16

- One of the condition to qualify 'Pure Agent' is *Neither holds nor intends to hold any title to the goods or services so procured or supplied as pure agent of the recipient of supply*
- What constitutes as a title in goods is not defined GST law. In the ordinary parlance, title means the ownership.

- it is important to note that, electricity or other connections are generally registered in the name of the owner, At the time of renting, right to use electricity is implied right given to the lessee. Hence, the question under consideration is whether implied right or possession constitute title in goods or service or both.
- In the law of property, title in its broadest sense refers to all rights that **can be secured and enjoyed** under the law. It is frequently synonymous with absolute ownership. However, the term does not necessarily imply **absolute ownership, however; it can also mean mere possession or the right** thereof.
- Given this, it could be construed that, even the invoice is in the name of lessor it constitutes as lessee hold the possession of the Goods. (Like Electricity bill is in the name of lessor however used by the lessee hence it could be construed that lessee hold or enjoy the title in goods). \
- We submit that, when water charges, electricity charges, taxes etc. are reimbursed by the lessee then the Lessor acts as an Agent of the lessee. In the event of the failure to pay such water charges, etc., the Corporation will treat it as a statutory charge over the property of the lessor (see: Section 141 of the Mumbai Municipal Corporation Act).
- Given the aforesaid, it could be construed that GST is not levied on the reimbursement of expenses at actual.

• However, as per Section 15 of CGST Act, transaction value includes '*any taxes, duties, cases, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier*'

The same is also explained in GST Flyers issued by the Government by way of example given below:

○ **Illustration:**

- *Suppose a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:*

Sr.No.	Component charged in invoice	Amount
1	Agency Income	Rs. 10000/-
2	Traveling expenses; Hotel expenses	Rs. 15,000/-
3	Customs Duty	Rs. 55,000/-
4	Docks Dues	Rs. 5000/-

In the above situation, agency income and travelling/ hotel expenses shall be added for determining the value of supply by the Customs Broker whereas Docks dues and the Customs Duty shall not be added to the value, provided the conditions of pure agent are satisfied

- As discussed aforesaid, as per Section 15 of the CGST Act, the value will be inclusive of all taxes except CGST, SGST, UTGST and IGST. So, all taxes will be included in the value for the purpose of GST except where benefit of Pure agent as provided in Rule 33 of CGST Rules, 2017 is availed.
- Given the aforesaid, even the property taxes recovered from the tenant could be liable to GST.



- Thus, we are seeking clarity on the aforesaid as to whether the GST will be applicable on the reimbursement of electricity charges, property tax, water charges etc. which are recovered at actual. Also clarify whether E- square can be treated as a pure agent?

If reimbursement of expenses qualifies as supply as defined under section 7 of the CGST Act what is the rate of GST applicable?

- Another school of thought is that reimbursement of expenses by the lessor from the lessee forms the part of consideration received towards rented property.
- Given this, it is important to analyse the other conditions of the supply

No.	Conditions	Remark
1	Transaction is made or agreed to be made for a consideration	Consideration is defined under Section 2(31) of the CGST Act, includes the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or any other person.
2	Two or more person shall be involved	in case of transaction under consideration two persons are involved (i.e. lessor and lessee)
3	in the course or furtherance of business	As per Section 2(17) of the CGST Act, business includes any activity or transaction in connection with or incidental or ancillary of the trade

- As discussed in the aforesaid paras, the definition of supply is inclusive and includes all supply other than supply specified in Schedule III of the CGST Act. Hence it could be construed that reimbursement of expenses is also covered under Supply as defined under Section 7 of the CGST Act.



- However, for the purpose of levy of GST there are two scenarios required to be considered under GST Law

- Whether GST is levied at the rate as applicable to expenses reimbursed or GST could be levied at the rate as applicable to renting of immovable property,

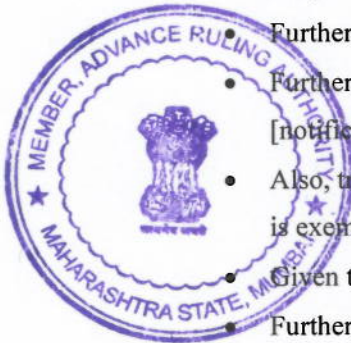
A GST could be levied at the rate which is applicable to expenses reimbursed by the Landlord

- In case of reimbursement of expenses at actual by the lessor from lessee it could be construed that GST is levied at a rate as applicable at the time of procurement of said expenses. The rationale behind it is that, reimbursement of expenses is nothing but original supply,
- As per Section 15 of the CGST Act, *the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply*
- Hence, GST is levied on transaction value which is price actually paid or payable. Given this, GST is levied on the value recovered from lessee.
- One of the example of reimbursement from lessee at actual is an electricity. Constitution (101) Amendment Act, 2016 (through which Centre and State got power to levy GST) has not amended entry no. 53 of State List. Entry No. 53 of State List - 'Taxes on the consumption or sale of electricity'

- Hence, to levy any tax on electricity is a subject matter of State Government and no GST is to be levied on same.
- Further, we would like to bring your kind attention that it is well settled through a Panthera of judgments from the Apex Court that electricity is 'goods'?

No.	Case Law	Judgement
1	Madhya Pradesh Electricity Board, Jabalpur [2002- TIOL-226-SC-CT LB]	It was held that, 'electricity is "goods" for the purposes of imposition of sales tax under the Madhya Pradesh General Sales Tax Act, 1959'.
2	National Thermal Power Corpn. Ltd (2002-TIOL-107-SC-CT)	held that electricity, though an intangible object is 'goods' covered by Entry 54 of List II of Schedule VII to the Constitution of India
3	M/S ICC Reality (India) Pvt Ltd. (2013-TIOL-1751-CESTAI-MUM)	We find that as per the provisions of Maharashtra Value Added Tax Act, 2002, electricity is also covered under Schedule. A sr.no.20 and charged to Nil rate of tax. In view of this, we find the electricity is goods chargeable to duty under Central Excise Tariff as well as under the Maharashtra Value Added Tax Act, 2002. Therefore, the supply of electricity to tenant amounts to sale of goods and not supply of service. Further the Notification No. 12/03 ST dated 20/6/2003 exempt from service tax, any value of goods supplied by service provider to service recipient.

- Hence, it could be construed that electricity is separate independent supply and does not constitute the part of renting contract.



- Further, the category, electricity has been kept aside under the purview of GST at present.
- Further, it is to be noted that, electricity is an "exempt supply" covered under HSN 2716 00 00 [notification No.1/2017-Central Tax (Rate)],
- Also, transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Sr. No.25 of Notification No. 12/2017-CT (R).
- Given the aforesaid, electricity expenses are not liable to GST when procured by the Company.
- Further, in case of reimbursement of expenses, it could be construed that the GST is levied at the rate applicable to original supply. As electricity is not leviable to GST hence reimbursement of electricity is also not liable to GST.
- Given below are certain expenses recovered by the lessor from the lessee and applicability of GST Rate if the rationale as discussed in the aforesaid para is applied

No.	Nature of Reimbursement	GST applicable
1	Electricity	Nil
2	Water	Nil, 5%, 12%, and 18% as applicable
3	Property Tax	NA
4	Cooking fuel	18%

B. GST could be levied at the rate which is applicable to renting of immovable property.

- 2.1 Alternately, it could be construed that the rate as applicable to rent is applicable to reimbursement of expenses.
- 2.2 As per section 2(30) of the CGST Act "composite supply" means 'a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or

both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;'

- 2.3 As per the definition the following are the essential characteristic of the Composite Supply made by a taxable person to a recipient:
 - consisting of two or more taxable supplies of goods or services or both, or any combination thereof
 - Said supply is naturally bundled and supplied in conjunction with each other in the ordinary course of business.
 - One of which is a principal supply as defined under section 2(90) of the CGST Act.
- Further, as per section 8 of the CGST Act, *the tax liability on a composite or a mixed supply shall be determined in the following manner, namely*
- *a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
- *b.*
- Given he aforesaid, it could be constructed that, the GST rate applicable to reimbursement of expenses is the rate as applicable to principle supply
- However, said rate is applicable subject to the condition that service provided is naturally bundled to each other hence it could be construed that only the expenses which are naturally bundled are liable for GST at a rate applicable to Principle Supply.
- Hence, reimbursement towards the expenses which are capable of differential treatment and can be provided separately like cooking fuel could not be covered under Composite supply.
- Hence, clarity is required whether the rate of GST applicable in case of reimbursement of expenses at actual.



PRAYER

- In view of the submissions made above, it is most humbly prayed that Hon'ble authorities may kindly pass advance ruling to clarify:
 - *Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actual?*
 - *In case GST is levied what is the rate of GST applicable to said reimbursement of expenses.*

Additional submissions made by the applicant --

3.3 ADDITIONAL SUBMISSION TO BE CONSIDERED WITH RESPECT TO PURE AGENT

- We refer the application filed by E-Square Leisure Pvt Ltd ("The Company") dated 23rd August 2018 where in the Company intends to seek below clarification
 - *Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?*
 - *In case GST is levied what, is the rate of GST applicable to said reimbursement of expenses?*
- With regards to same the GST authority has raised query that,
- Amongst the **4 conditions specified in the rule** the given below condition is not fulfilled with respect to underlying transaction as there is no contractual agreement with the supplier (i.e. Electricity Board) and recipient (I.e. Lessee) :

- *"The contractual agreement by the supplier with the recipient to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both."*
- The methodology used by the Company for apportionment of electricity charges and water charges to lessee is not specified.
- In this regard, we request to consider following submissions:

3.4 Applicant's SUBMISSIONS --

a. We hereby submit that, there is Contractual Agreement with the Lessee and lessor..

b. We request you to consider the following submission to support our view.

Pure agent is a person who provides services with respect to main service.

(1) Rule 33 of CGST Rules provides that 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 specified conditions are satisfied.

(2) There are three conditions prescribed in Rule 33 of CGST Rules:

(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.*

(3) Further, Rule 33 of CGST Rules defines 'pure agent' as under:

'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*

(4) Given the aforesaid pure agent is a person who supplies something **in addition** to the services he supplies.

(5) Further as per FAQ issued by the CBEC, **A pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply.**

(6) Hence, the relationship between **provider of service and recipient of service in respect of the main service** is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent. ,



(7) Additionally, we would like to refer the example given in the FAQ issued by the Government with respect to pure agent:

'Let's understand the concept by taking an example. A is an importer and B is a Custom Broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the consignment to A would also require taking service of a transporter. So A, also authorizes B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals. In the given illustration, B is providing Customs Brokers service to A, which would be on a principal to principal basis. The ancillary service of transportation is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of Customs Broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.'

(8) This aspect was specifically clarified in erstwhile Service Tax regime by CBEC vide Circular No. 175 /01/2014 - ST, Dated: January 10, 2014;

3	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is excluded from the value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST?	In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule, For illustration, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available, However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.
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(9) Further, electricity charges are not liable to Service Tax has been upheld in numerous earlier judgments [refer *ICC Reality (India) Pvt. Ltd v. CCE (2013) 32 STR 427 (Tri-Mum)*, *EON Hinjewadi Infra. Pvt. Ltd (2012 TIOL-1688-CESTAT-Mum)*].

(10) Further, it is pertinent to note that Entry no. 53 i.e. 'Taxes on the consumption or sale of electricity' is continued even after the Constitution of India was amended [vide Constitution (One Hundred and First Amendment) Act, 2016. Effectively, this means that electricity remain a subject matter of State and cannot be subject to GST.

(11) In the instant scenario, the facts can be summarised as under:

r. No	Parties to contract	Underlying transaction	Type of supply
1	Renting of property	Renting	Main Supply
2	Supply of electricity	Supply of Electricity to lessee on behalf of electricity board	Supply of goods/services in respect of main supply.

(12) Given this, pure agent is a person who provides services with respect to main service to the service recipient and same is as per the contractual agreement between provider and recipient of the main service.

Rule 33 of Determination of Value of Supply Rules specify the contractual agreement between supplier and recipient of the main service (i.e. Renting)

(13) As per Rule 33 of CGST Rules, the *contractual agreement by the supplier with the recipient to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both.*"

(14) Hence, the contractual agreement specified between the supplier (Lessor) to recipient (Lessee) to act as his pure agent to incur specified expenditure (i.e. Electricity) and later on provider of main service will take reimbursement of the actual expenses incurred.

(15) Further FAQ has also clarified that, *the important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract. In the illustration of Importer and Customs Broker given above, assuming that the contract was for clearance of goods and delivery to the Importer at the price agreed upon in the contract. In such case, the Customs Broker would be using the transport service for his own interest (as the agreement requires him to deliver the goods at the importers place) and thus would not be considered as a pure agent for the services of transport procured.*

(16) Given this, we will submit that, contractual agreement specified in the said rule is between the person who entered in to contract to provide main service and act as a pure agent to incur certain expenses which are required to supply main service.

(17) Accordingly, we submit that the condition as specified in Rule 33 of Determination of Value of Supply with respect to contractual agreement is satisfied.

Methodology of monitoring the system to track water and electricity consumption of building

- i) The Company has installed IBMS Project of Siemens Building Technologies Ltd 2018 to monitor the energy and water consumption of the buildings.
- ii) This system integrates all the third-party systems to ensure more visibility on the energy data and water consumption through energy meter integration.
- iii) This system helps to measure accurate reading of consumption of water and electricity.

3.5 ADDITIONAL SUBMISSION TO BE CONSIDERED WITH RESPECT TO PURE AGENT

- We refer the application filed by E-Square Leisure Pvt Ltd ("The Company") dated 23rd August 2018 where in the Company intends to seek below clarification
 - Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?
 - In case GST is levied what is the rate of GST applicable to said reimbursement of expenses?
- With regards to same the GST authority has asked to submit the detailed note on **conditions specified in the rule with respect to pure agent.**
- In this regard, we request to consider following submissions
OUR SUBMISSIONS --
 - We hereby submit that, there is Contractual Agreement with the Lessee and lessor.

- **Rule 33 of Determination of Value prescribes the condition to qualify certain expenses as a Pure agent.** The table given below depict the condition along with detailed analysis thereof

N	Conditions	Remark
1	<i>The contractual agreement by the supplier with the recipient to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both."</i>	The contractual agreement is entered in between the E-Square Leisure Pvt. Ltd and Carnival Films Pvt. Ltd. for renting of property
2	<i>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</i>	We would like to refer para 8(i) of the agreement of E-Square Leisure Pvt. Ltd and Carnival Films Pvt. Ltd 'Electricity charges (including running cost of DG & HVAC) for electricity consumed in the Theatre and for any Signage of the Lessee installed at the Complex / façade of the Complex shall be reimbursed by the Lessee based on the reading shown in the sub-meter/ BTU provided by the Lessor at the Multiplex, at such rate (which shall be arrived at by diving the total electricity bill by the number of units measured excluding any late payment charges) as may be charged by the electricity /power supply. company. Given this, to compute the consumption, the Company has installed Siemens technology for recovery of the electricity charges based on respective consumption.
3	<i>The pure agent does not use the goods or services so procured in his own interest."</i>	The electricity charges are to be recovered on the basis of Actual usage of the lessee. It is to be noted that invoice is not yet raised on Lessee.
4	<i>Neither holds nor intends to hold any title to the goods or services so procured or supplied as pure agent of the recipient of supply</i>	<ul style="list-style-type: none"> ▪ What constitutes as a title in goods is not defined GST law. In the ordinary parlance, title means the ownership. ▪ It is important to note that, electricity or other connections are generally registered in the name of the owner. At the time of renting, right to use electricity is implied right given to the lessee. ▪ In the instant case as tenant uses the electricity, the supplier 'Neither holds nor intends to hold any title to the goods or services so procured'. Para 2.5 - 2.16 of the original submission of Interpretation of Law And / Or Facts' has detailed discussion in this regard.
5	<i>The supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;</i>	As the agreement clearly mentioned the fact that electricity used is collected from the lessee it could be construed that, E-Square Leisure PvtLtd makes the payment of electricity charges on behalf of Carnival Films Pvt. Ltd. It is to be noted that invoice is yet to be raised on Lessee.
6	<i>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</i>	Invoice is yet to be raised on Lessee.
7	<i>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</i>	<ul style="list-style-type: none"> • The contractual agreement is entered in between lessee and lessor for renting of property and not providing electricity. • There are two supplies, i.e. one of renting of property and another or providing electricity. Thus charges for electricity are in addition to the renting of immovable property service provided.



- Accordingly, we submit that the condition as specified in Rule 33 of Determination of Value of Supply with respect to contractual agreement is satisfied.

3.6 ADDITIONAL SUBMISSION TO BE CONSIDERED WITH RESPECT TO PURE AGENT

- We refer the application filed by E-Square Leisure Pvt Ltd ("The Company") dated 23rd August 2018 where in the Company intends to seek below clarification
 - Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?
 - In case GST is levied what is the rate of GST applicable to said reimbursement of expenses?
- With regards to same we hereby submit that we had applied for determination of the question of applicability of GST of the reimbursement of expenses from lessee to lessor given below
 - Electricity charge
 - Water Supply
 - Property Taxes
 - Cooking fuel
- In this regard, we would submit that, at the time of filing of application for advance ruling the Company was intent to enter in to the Agreement with Carnival Films Private Limited (herein under referred as 'Lessee'). Hence, the terms of the agreement were not final. Given this, we had applied for the determination of GST liability on the expenses which we were intent to collect from lessee.
- However, it is to be noted that, in the registered agreement the Company has agreed to reimburse the expenses given below at actual
 - Electricity charge
 - Water Supply
- Given the aforesaid, we submit that kindly consider the revised details of reimbursement of expenses given below for determination of GST liability.
 - Electricity charge
 - Water Supply



04. CONTENTION – AS PER THE CONCERNED OFFICE

The submissions, **as reproduced verbatim**, could be seen thus-

Issues on which advance ruling is sought are

1. Whether GST is to be levied on reimbursement of expenses from the lessee by the lessor at actuals?
2. In case GST is to be levied, what is the rate of GST applicable to said reimbursed expenses?

With reference to facts as per Annexure I, additional information was sought from Vaishali Kharde, Chartered Accountant, regarding method for 'at actual determination of expenses of electricity, water charges, property tax, cooking gas.

In response, additional submission in proforma Annexure II is given by dealer on 10.09.2018 through email. Also, copy of contractual agreement between E-Square Leisure PVT LTD and Carnival Films PVT LTD was produced by her.

As per point no.4 of the submission, E-Square Leisure PVT LTD has installed IBMS project- (i) to monitor energy and water consumption of building, (ii) to integrate all third party systems to ensure more visibility on energy data and water consumption through energy meter integration and, (iii) to help to measure accurate reading of consumption of water and electricity.

As per para 8 (i) of contractual agreement, about utility charges, electricity charges (including running cost of DG and HVAC) for electricity consumed in theatre and for the signage of the lessee installed at the complex/ facade of the complex shall be reimbursed by the lessee based on the reading shown in the sub-meter/ BTU provided by the lessor at the theatre, at such rate (which shall be arrived at by dividing the total electricity bill by the number of units measured excluding any late payment charges) as may be charged by electricity power supply company. And,

As per para 8 (ii), charges for potable water and RO treated water shall be metered separately and charged at actual cost. And,

As per para 9 (i), Property tax shall be borne and paid solely by the lessor E-Square Leisure PVT LTD.

Said contractual agreement does not include any terms for reimbursement of cooking gas and about method of actual determination of the charges.

Further, copies of outward supply invoices that show separate collection of expenses of electricity, water charges, property tax, and cooking gas are not produced by the applicant.

After taking into consideration facts as elaborated in annexure, submission and contentions vide annexure II and contractual agreement, submission on part of jurisdictional authority is as follows:

1. Issue whether GST is to be levied on reimbursement of expenses from the lessee by the lessor at actuals?

Reply: YES

GST is leviable on reimbursement of expenses from the lessee by the lessor, at actuals. Applicant has submitted that as per rule 33 of CGST Rules,

'Determination of value of supply rules', reimbursements are not liable to GST if the same are incurred in the capacity of 'pure agent'.

For ready reference, Rule 33 of CGST Rules is reproduced as follows:

Rule 33. Value of supply of services in case of pure agent ,Notwithstanding anything contended in the provisions of this Chapter, the expenditure or costs incurred by a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

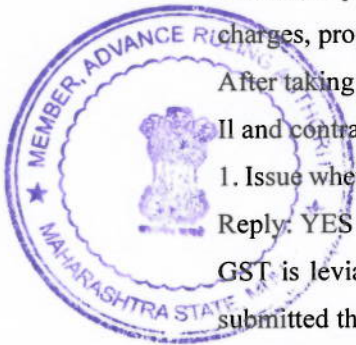
(i) The supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(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 the supply are in addition to the services he supplies on his own account.

Explanation- For the purpose 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.

It is submitted that explanations in rule have to be read with conditions. As per condition (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. Here, applicant, E-Square Leisure PVT LTD is lessor, the supplier. Contractual agreement is between E Square Leisure PVT LTD and recipient of supply for renting of immovable property. There is incidental supply of electricity, water, cooking fuel from supplier to lessee. As per point no.3 to annexure I, in accordance with contractual agreement, aforesaid electricity and water charges, though are recovered from lessee at actual, condition (i) to Rule 33 of CGST Rules is not fulfilled. Therefore, for reimbursed electricity charges where electricity is supplied by power company and water charges where potable water is supplied by municipal corporation, applicant does not fulfil all the conditions to be a 'pure agent', as laid down in Rule 33 of CGST Rules:

Therefore, contention of applicant that reimbursement of expenses of electricity, water charges can be qualified as expenses incurred by lessor E-Square Leisure PVT LTD, as 'pure agent', is not acceptable. Reimbursed electricity, water charges even though charged separately in supply invoices are liable for tax under GST Act.

Further, for electricity supplied thorough DG and HVAC, and for RO treated water, these are supplies from applicant and not from third party. Therefore for such supplies, applicant is not a 'pure agent' and corresponding reimbursed electricity, water charges even though charged separately in supply invoices are liable for tax under GST Act. About reimbursement Property Tax: Vide terms of Contractual agreement, applicant E-Square Leisure PVT LTD has himself agreed to bare the Property Tax.

About reimbursement of cooking gas: In absence of supporting documents, the question can not be answered.

2. In case GST is to be levied, what is the rate of GST applicable to said reimbursed expenses?

Supply of services- renting of premises and supply of electricity, potable water are, not naturally bundled nor are they supplied in conjunction with each other in ordinary course of business. Therefore, such supplies are not composite supply as per section 2(30) of the CGST Act.

Further, as per terms of contractual agreement, electricity charges and water charges are charged in addition to rent. As per verbal contention, these charges are intended to be collected separately in the outward supply invoices, on as actual basis. Therefore, this is not a mixed supply, as provided under section 2(74) of the CGST Act.

Therefore, reimbursed expenses, if collected separately, will be liable to tax at scheduled rates.

05. HEARING

The Preliminary hearing in the matter was held on 12.09.2018, Sh. Pritam Mahure, C.A., along with Ms. Vaishali Kharde, C.A. appeared and made oral and written submissions for admission of application as per detailed contentions made in their ARA submissions. Jurisdictional Officer Ms. Kiran

Sonawane, Dy. Commr. of S.T.(E-201), Pune appeared and stated that they would be making submissions in due course.

The final hearing in the matter was held on 18.12.2018 Sh. Pritam Mahure, C.A., along with Ms. Vaishali Kharde, C.A., appeared and made arguments on submissions. Jurisdictional Officer Ms. Kiran Sonawane, Dy. Commr. Of S.T. (E-201), Pune appeared and made written submissions. We heard both the parties.

06. OBSERVATIONS

We have gone through the facts of the case, oral & written submissions made by the applicant as well as the jurisdictional officer and the applicable provisions of the GST laws in this regard.

In this case applicant intends to enter into a contractual obligation/agreement of renting of immovable property that is to say 'Theatre', with the lessee on fixed rentals. The applicant has fixed monthly amounts towards rent, based on periods, from the commencement date. Applicant has no issue on paying GST on rental income, property tax, cooking fuel and security deposits. In addition to the giving of the immovable property on lease, the applicant also intends to provide utilities, such as electricity, for Theatre and for any signage of the lessee installed at the complex/façade of the complex through power Supply Company and running of DG and HVAC sets and potable water and RO treated water through facilities installed in the complex. The utility charges such as electricity charges including cost of DG and HVAC for electricity consumed would be recovered from lessee based on the reading shown in the sub-meter provided by the applicant, so also the consumption of potable water and RO treated water charges would be recovered based on the reading shown in the water meter installed for the purpose. The utility reimbursement charges such as electricity charges and water charges from the lessee is the central point of this ARA.

Applicant is of the view that reimbursement of water charges, electricity charges, is nothing but repayment of certain expenses incurred by a person on behalf of other and they do not have character of supply as defined under the GST Act. Alternatively, applicant is of the view that the reimbursement of expenses by them can qualify as an expenses incurred as a 'Pure Agent' and would not be considered in the value of supply for the levy of tax.

In order to ascertain the true nature of transaction we feel it necessary to refer to certain clauses of the sample agreement as below:

"Section –II-Recitals

WHERE AS:

- I. The Lessor is the absolute, exclusive and lawful owner and is otherwise well and sufficiently entitled to the Theatre more particularly described in Schedule: I hereunder.*
- II. The Complex including the Theatre is constructed in accordance with the sanctioned plans duly approved by the Pune Municipal Corporation (PMC) on the piece of land purchased by the Lessor from. Ms. Tara Gopalji Bhuta by executing Deed of Indenture dated 1.7.03.1987 registered at the office of the Sub-Registrar at Haveli No. 1 having registration number 3724/2/12*
- III. The Lessee has represented to the Lessor that, it owns and/or operates several Multiplex theatres in various cities all over the country and has established for itself high reputation and considerable*

goodwill in such business and has been operating Cinemas under the brand name "Carnival Cinemas" and shall run and operate the Theatre under the name of E-Square Carnival cinemas.

IV. After negotiations between the Parties, the Lessor has agreed to lease out the Theatre into the lessee and the lessee has agreed to take over the Theatre on lease, to conduct and operate the Theatre on and from Commencement Date.

SECTION III – COVENANT—

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED BY BETWEEN THE PARTIES HÉRETO AS FOLLOWS:

THEATRE: -

1.1 The Lessor hereby agrees to demise unto the Lessee the Theatre (more specifically mentioned in the Schedule 1) along with the assets (more specifically mentioned in the Annexure B) on and from the Commencement Date and to carry on business, within the Theatre premises, of conducting, operating and running, the business of exhibition of cinema/films/movies and entertainment in and/or from the Theatre and includes the business/es similar, allied, ancillary, incidental and related thereto by the Lessee viz. retailing of variety of food and beverages; concession counter/s, advertisement of any available formats of any nature (including on and off screen advertisements), promotional activity, sale of cinema/ movie merchandise, memorabilia, food courts, gaming and entertainment, ATM, etc., along with the right to the Lessee, its management, employees, servants, agents, customers and persons authorized by the Lessee, to use the entrances; doorways, entrance hall, stair cases, landings and passages in the complex for the purpose of ingress and egress from the Theatre the exclusive use and benefit of the utilities/ facilities provided in the Theatre, the exclusive use and benefit of the operating licenses for operating the Theatre.

1.2 The reference to the Theater in this DEED shall mean and include what is provided in this clause:

2. **TITLE / MORTGAGE: --**

6. **TENURE & LOCK-IN-PERIOD --**

The Tenure of this DEED shall be for a period of 18 (eighteen years ("Term") to be computed from the Commencement Date during which period, the Lessee shall be entitled to the Theatre. The entire Term shall be a Lock-in-period for the Parties ("Lock-in-Period ") wherein the Parties shall not be entitled to terminate this DEED save and except as mentioned in this DEED.

7. **RENT --**

On and from the Commencement Date, the lessee shall pay to the Lessor the following amounts towards Rent:

Period (starting from the Commencement Dates)	Monthly Rent Rs.
For the first 3 years	29,16,667/-
4 th to 6 th Year	38,54,167/-
7 th Year to 9 th Year	38,57,292/-
10 th Year to 12 th Year	44,35,885/-
13 th Year to 15 th Year	51,01,268/-
16 th Year to 18 th Year	58,66,458/-

The Rent is exclusive of applicable GST and/or any other indirect Taxes or cesses by whatever name called which Lessor may require to pay either at the commencement of this DEED or any time during the Tenure of lease by reason of Lessor giving the Theatre to the Lessee on lease excluding any taxes levied on the Theatre building (property tax).

The Rent shall be subject to deduction of tax at source in accordance with applicable laws. The Rent shall be paid by the Lessee to the Lessor on or before the 10% say of the succeeding month i.e. in arrears. Lessor shall raise invoice for the Rent received

8. UTILITY CHARGES:-

In addition to the Rent, the Lessee shall also be liable to pay the following:

(i) electricity charges (including running cost of DG & HVAC) for electricity consumed in the Theatre and for any Signage of the lessee installed at the Complex / facade of the Complex shall be reimbursed by the Lessee based on the reading shown in the sub-meter/ BTU provided by the Lessor at the Theatre, at such rate which shall be arrived at by dividing the total electricity bill by the number of units measured excluding any late payment charge) as may be charged by the electricity power supply company.

(ii) Charges for potable water and RO treated water shall be metered separately and charged at actual cost. The GST and/or any taxes as are applicable on the reimbursement of electricity payment and water consumption charges, shall be borne and paid by the lessee. Lessor shall along with the invoice shall provide supporting documents. The utility charges as mentioned above shall be paid within 10 days from the date of invoice. Lessee shall always keep deposited an amount equivalent to 2 months of estimated consumption of utility charges with the Lessor in advance.

9. TAXES:

(i) **Property Taxes:** The past, present and future municipal taxes, property taxes and also all other taxes, duties, cases, fees and levies of any nature whatsoever levied and / or imposed by the concerned statutory/local Authority in respect of and / or relating to the Theatre and the Complex (collectively referred to as "Property Taxes") shall be borne and paid solely by the lessor

(ii) **GST on Rent and Security Deposit:** The applicable GST on the Rent and Security Deposit shall be paid by the lessee. Subject to the lessee paying the GST in time, the Lessor shall, in due compliance of its obligations, remit the GST so charged (if any) to the Lessee, to the appropriate government authority and file GST returns as prescribed, within the statutory timelines, mentioning all appropriate and relevant information on the GST platform, which enables the Lessee to claim timely credit of GST in the appropriate GST registration against the Tax invoice issued by the Lessor. In the event, the credit of GST is not granted or denied under the applicable laws for non-payment of taxes charged or on account of any non-compliance (including but not limited to non-filing of information, non-filing of returns, non-payment of appropriate GST to appropriate government / incorrect submission of information on the GSEN Platform), then the lessor shall rectify the said non-compliances/errors in the event, the non-compliance/ error is not rectified in a timely manner, then the lessor shall have to pay the amount of GST charged along with the interest. Penalty and/or any other cost.



10 SECURITY DEPOSIT AND GST THEREON:

- a) *The Lessee shall deposit with the lessor an amount of Rs.57, 50,00,000/- (Rupees. **Fifty Seven Crore Fifty Lakh only**) towards interest, Free Refundable Security Deposit ("Security Deposit") in the following manner:*
- (i) *Rs. 8,62,50,000/- (Rupees Eight Crore Sixty Two lakh Fifty Thousand only) has already been paid by the Lessee to the lessor receipt **whereof is hereby** acknowledged by the Lessor; and*
- (ii) *Rs. 48,87,50,000/- (Rupees Forty Eight Crore Eighty Seven Lakh Fifty Thousand only) shall be paid simultaneously with the registration of Lease Deed.*
- b) *Lessor will seek advance ruling of the applicability of GST on the Security Deposit. In case, if the ruling states that GST is applicable on the Security Deposit or if there is a demand of GST from the concerned Government department, then lessee hereby agrees to forthwith reimburse the appropriate GST on the security deposit with interest and penalty, if any, and to indemnify and keep indemnifies the Lessor from and against any liability/ penalty which the Lessor has to bear on account of non-payment of GST on the Security Deposit. The Lessor shall issue tax invoice/debit note for GST on Security Deposit.*
- c) *The Security Deposit shall remain interest free with the Lesson throughout the Tenure and it shall be refundable on the expiry of Tenure in the manner specified herein this DEED.*

12. COMMON AREA MAINTENANCE (CAM):

- (a) *During the Term hereof, the lessor shall ensure, including but not limited to the following:*
- (i) *that the Common Areas including the Parking Area and areas outside the Theatre, are always kept clean and are maintained in good condition;*
- (ii) *that the ingress and egress for the patrons should remain available, lifts should be operational, **lighting in areas leading to the Theatre and Parking are made available, at least 45 minutes, before the beginning of the first show till, at Least 45 minutes, after the end of last show***
- (iii) *to engage proper agencies for cleaning, washing, Sweeping and housekeeping all the Common Areas and areas outside the Theatre, provide garbage bins and ensure the service of garbage collection and timely disposal of the same.*
- (iv) *that the common Areas and areas outside the Theatre, lighting and HVAC shall be fully operational and functional at their full or requisite capacity, on an uninterrupted basis every day for 365/366 days in a Year and shall attend/cause to attend all repairs and servicing in respect thereof in a timely and prompt manner;*
- (v) *to maintain. repair, replace & upkeep of common and dedicated, equipment & utilities, not limited to gardening and landscaping expenses, all Parking Area, passages. corridors, courtyards, lift halls, elevators, escalators, Diesel power Generating ("DG") set (if not dedicated for Theatre), electrical units and panels, basement, passages, staircases, lobbies, air conditioning system, firefighting plant rooms, roads, paving's, lights, drains, sewers and other amenities located in the Common Areas;*
- (vi) *Cost of AMC's for the equipment and services outside the Theatre and in the Complex;*



(vii) To make adequate provision for round the clock security for the Complex excluding the Theatre. The services set out at (i) to (vii) hereinabove are collectively referred to as 'CAM Services'. The Lessor may appoint specialized service provider, agency or agencies (hereinafter referred to as "CAM Agency) entrusting them the responsibilities to provide the CAM Services. However, any such appointment shall absolve the Lessor from fulfilling its obligations towards the Lessee relating to CAM Services and in the event of default or deficiency on part of CAM Agencies in fulfilling its obligations towards the lessee, the lessee shall be entitled to call upon the lessor to rectify the default or deficiency on the part of CAM Agencies by giving written notice and the lessor shall be bound to rectify any default or deficiency on the part of the lessor/ CAM Agencies in fulfilling its obligations towards the lessee within 72 hours from the date of notice.

(b) if the services provided by Lessor or its nominated agency are deficient with respect to CAM Services for a continuous period of more than 7 (seven) days , then the Lessee shall have the liberty to do And deeds for and on behalf of the lessor and at the Lessor's cost to remove such deficiency. The lessee shall raise an invoice along with GST on the cost incurred on the lessor and lessor shall pay the same within 15 days of receipt of invoice.

(c) The Lessee shall pay to the Lessor/CAM Agency, CAM Charges plus GST as applicable at actuals. The estimated CAM Charges for every period of 6 (Six) months of the Term shall be paid by the Lessee in advance and the same shall be adjusted against the monthly CAM Charges for the following 6 (six) months.

It is clarified that any amount paid towards Sinking fund and/or any other fund created for replacement of plant and machinery which is outside the Theatre shall not be a part of the CAM Charges did not paid by the Lessee.

It is clarified that the Common Areas have not been leased to the lessee and will be used by all the occupants in the Complex.

13 MAINTENANCE OF EQUIPMENT, AMENITIES & FACILITIES IN COMMON AREAS AND THEATRE

The Lessor shall ensure that the equipment and amenities required for operating the Theater except any such equipment which to provide within the Theatre, shall be provided and maintained in the Complex throughout. The Tenure of this DEED and the same shall, subject to Force Majeure, be fully operational and functional, at their full load / capacity, or an uninterrupted basis at all times during the Tenure of this DEED at the costs of the Lessor. On and from the Commencement date lessee shall be liable to maintain the equipment in Theatre at its cost. The existing AMC's for the equipment in the Theatre shall be renewed by lessee as and when it is due. Any consumables I not part of AMC shall be procured/billed to the lessee. During the Tenure of the leases the lessee shall be liable to maintain the plant and machinery, equipment, fitting, fixtures, etc., installed inside the Theatre and the Lessor shall maintain the plant and machinery, lights, fittings, fixtures, DG, etc. installed outside the Theatre which includes the facade and Complex roof. It is clarified that any equipment outside the Theatre premises but dedicated for the Theatre shall be maintained by lessee. However any replacement of such equipment shall be done by the lessor.

The lessee shall be at liberty to carry out during every 6(six) years span from the commencement Date renovation of the Theatre. In case, the lessee decides to carry out renovation of theatre, the lessee shall provide advance 7 seven days' notice to the lessor before commencing such renovation activity, in such a case, the Lessee shall be entitled to reduction of proportionate rent per screen for a period closure for such renovation not exceeding 30 days. Such activity shall be done as per the mutual consent of the Parties. No structural changes will be permitted during such refurbishment, repairs and renovation without the written consent of the lessor,

14. PARKING AREA –

15. HOARDINGS/SIGNAGE –

16. LESSOR'S REPRESENTATIONS & COVENANTS:

18. LESSEE'S ASSETS “

From the conjoint reading of above clauses of the agreement we find applicant has agreed to lease out the Theatre which is an immovable property to lessee to conduct and operate the Theatre for rent. As per entry no. 5 (a) of Schedule II - Activities of Transaction to be treated as supply of Goods or supply of Services; renting of immovable property is a supply of services and liable to tax under the provisions of GST Act. We strongly feel that Theatre business will not be organic unless it is accompanied with supply of power and water. The utilities such as electricity, supply and water supply are basic amenities subject to which competent authority will not issue 'No objection Certificate' to conduct business of running a Theatre. As such applicant is providing more than two services such as renting of immovable property, supply of power through DG set and water through RO besides cooking fuel. In this view of the matter we shall now discuss whether the provision of impugned supplies, constitute composite supply or mixed supply as defined under GST. The expression composite supply has been defined under the Act as below: Section 2(30) "composite supply" means 'a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;'

The concept of composite supply has been explained in GST Flyer No 4 as below: -

The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such Service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

From the scrutiny of clauses of the agreement and applying the above test to the facts of the present case we find that renting of immovable property would be the main supply and provision of other utilities such as electricity, and water supply, fuel etc. would be in the nature of ancillary supply which help in better enjoyment of the main supply that is Theatre. Principal supply or main supply basically signifies the supply of goods or services that is formed as a substantial constituent of a composite supply and any other

supply being ancillary. We must accept as a matter of fact all provision of services as envisaged by the contract are interdependent and if one or more is removed the nature of supply would be affected.

From the above discussion we conclude that utility charges in the nature of electricity charges and water reimbursed by the applicant from lessee forms part of composite supply.

The second line of argument adopted by the applicant is that even if the reimbursement is construed as a supply under the GST Act, tax can not be levied as the expenses are incurred by them as 'pure agent'.

Section 15 of CGST Act which has assigned meaning to the expression 'transaction value'. is reproduced as below:

Value of taxable supply.

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the Central Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if -

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Thus the value of supply includes all amounts that pertains to specific supply for the purpose of levy of tax except, subsidies provided by the government and the value of discount. However, as per Rule 33 of GST Valuation Rules, 2017 the expenditure or cost incurred by a supplier, as a pure agent of the recipient of the supply shall be excluded from the value of supply. However, such exclusion of expenditure

incurred as a pure agent is possible where the conditions are required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier. The relevant rule is reproduced as below:

Rule 33. Value of supply of services in case of pure agent ,Notwithstanding anything contended in the provisions of this Chapter, the expenditure or costs incurred by 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 the supply are in addition to the services he supplies on his own account.

Explanation- For the purpose 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.

Therefore the issue before us is to decide whether on the facts of the transaction the applicant can be treated as a pure agent? Broadly speaking a pure agent is one who, whilst making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent.

With regards to pure agent, applicant contents that the reimbursement of expenses, incurred by them, such as electricity charges, water supply charges etc. from lessee are towards payment to the third party suppliers. However we find that the facts state otherwise. The applicant has installed the main electric connection and has different sub connections at each location for reading actual consumption of electricity. Applicant has also installed the DG sets for generation of electricity in case of power failure. The water required is also provided through RO system. All these goes to show that these supplies are on their own account and is for effective enjoyment of activities related to the Theatre. Further, we find that the provision of supply is made by the applicant to comply with the mandatory requirements of the local body and the Licensing Authority under Cinema Act and Cinema Rules 3 to operate the Theatre.

Further, from the terms of the agreement and the transaction, we do not find any authorization, obtained by the applicant from the recipient of the services, to act as pure agent and to make payment to third parties.

In view of the above, we accept the contention of the jurisdictional officer that the applicant has failed to establish themselves as a pure agent as defined under the GST Valuation Rules and therefore the expenditure or cost incurred by the applicant and subsequent reimbursement thereof cannot be excluded from the value of supply.

06. In view of the deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 71/2018-19/B- 171 Mumbai, dt. 29/12/2018

For reasons as discussed in the body of the order, the questions are answered thus –

Question :- Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?

Answer :- *Answered is in affirmative.*

Question :- In case GST is levied, what is the rate of GST applicable to said reimbursement of expenses ?

Answer :- *As the reimbursement of the expenses constitute composite supply GST would be payable at a rate as applicable to the principal supply.*



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.