

**GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/100/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/27)

Date:14.10.2020

Name and address of the applicant	:	M/s. Gujarat Industrial Security Force Society, G-1, New Mental Hospital Campus, Meghaninagar, Ahmedabad Civil Hospital, Ahmedabad-380016.
GSTIN of the applicant	:	24AAAAG0372L1ZW
Date of application	:	16.07.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)Admissibility of input tax credit of tax paid or deemed to have been paid. (e)Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	24.09.2020 (Through Video Conferencing)
Present for the applicant	:	Shri Hasit Dave, Advocate.

BRIEF FACTS

The applicant M/s. Gujarat Industrial Security Force Society (hereinafter referred to as GISFS) located at O-1, New Mental Hospital Campus, Meghaninagar, Ahmedabad Civil Hospital, Ahmedabad-380016 is involved in providing the services of Security to many organisations. The applicant has submitted that they are a society registered under Society Registration Act, 1860 and Public Charitable Trust registered with Charity Commissioner; that moreover, GISFS is a charitable trust registered under Section 12AA of the Income Tax Act, 1961 since 2005 and is a purely non-profit organisation providing employment to youth of rural and urban areas of the state for their upliftment and good lives; that GISFS is providing services of Securities to almost all the departments, offices, institutes, library, schools, colleges, hostels etc. working under the direct or indirect control of the Gujarat Government; that although GISFS is organised by the Gujarat government, it doesn't receive any fund or grant from the Government or any organisation.

2. The applicant has submitted that there are more than 5000 security guards working under GISFS and to whom GISFS is giving employment opportunity; that GISFS is giving them salary as per Minimum Wages Act as prescribed by the authority from time to time; that GISFS is giving its security services to almost 600 clients across Gujarat State and among them, mostly are of Government or semi government organization.

3. The applicant has submitted that with regard to current situation of GISFS for charging GST to the client, they are providing security to their clients for which they are charging the amount which they are paying to the guards as per Minimum Wages Act plus 12% as establishment charges to run their administration office and to cover their administration cost like administration

staff salary, stationery, electricity of admin office etc; that out of 112%, 100% they are paying to their guards as wages and remaining 12% is utilized to recover their administration office cost; that basically, they are left with nothing and by chance they have surplus then it will be utilized for capital expenditure of society like purchase of uniform, shoes etc. for security guards; that they are charging GST @ 18% on Rs.112/-(100 + 12% establishment charges) and collect the same from their client and they are paying GST to the Government in the same way since the incorporation of GST.

4. The applicant has further submitted that they came across a few judgements of jurisdictional authority for charging of taxes in the same case as discussed above and in the said judgement, authority has decided to charge the taxes after abatement towards payment made on account of wages, salaries, contribution made towards PF, ESIC etc; that in the said judgement, they have decided to charge the taxes after deduction of wages etc. paid to security guards and in their case GST @18% can be charged on establishment charges of Rs.12 only and not on whole amount of Rs.112/-. The applicant has referred to the case of Security Guards Board for Greater Bombay & Thane Dist v/s Commissioner of Central Excise, Thane-II by Mumbai Appellate Tribunal wherein it was held as under:

“31. Disbursement of wages and other allowances to registered Security Guards of the Board-The wage and other allowances payable to the registered Security Guards of the Board every month by the registered principal employer shall be remitted by the registered principal employers by cheque to Secretary of the Board, within such time after the end of the month, as may be specified by the Board. The Secretary thereupon shall arrange to disburse the wages and other dues, if any to the registered Security Guards of the Board on specified days every month subject to deductions, if any, recovered from them under the Scheme, Provided that the Board may, if it thinks fit, and subject to such conditions as may be laid down by it, allow a registered principal employer to pay directly to the Security Guards the wages and other allowances after making such deductions as may be authorized and recoverable from them under the Scheme, within such time and in such manner as may be specified by the Board.

From the above clause, it is apparent that the wages and allowances are collected by the Board as an Agency for payment to the concerned persons/authorities. Therefore, the wages and allowances are excludible from the value of service tax. Thus the taxable value for the purpose of levy needs to exclude these charges. The demand is modified to that extent.”

5. The applicant has stated that the said matter was decided uniformly in the case of M/s. M.P.Security Force v/s. Commissioner of Central Excise and Service Tax (Bhopal/MP) by New Delhi Tribunal wherein it was held that:

“We, accordingly, hold that the appellant is entitled for the abatement towards the payment made on account of contribution towards ESL, EPF and PF and also through wages and salaries while computing the assessable value in terms of Section 67 of the Act for the payment of service tax.”

6. The applicant vide their additional submission given vide email dated 24.09.2020 has cited the following judgements in support of their claim that reimbursable expenses are not to be added/abated to/in the assessable value of GST for charging GST on Security Guard Services and submitted scanned copies of the same:

- (i) Final Order No.71115/2016, dated 2-12-2016 in Appeal No. ST/70025/2015-CU(DB) and Cross Objection No. ST/CROSS/70318/2016 by CESTAT, Regional Bench, Allahabad in the case of CCE & ST Agra V/s Antz Management Consultancy Pvt Ltd.
- (ii) Judgement of the High Court of Delhi dated 30.11.2012 in the case of Intercontinental Consultants & Technocrats Pvt Ltd V/s Union of India.
- (iii) Judgement dated 07.03.2018 of the Supreme Court of India in the case of Union of India v/s. Intercontinental Consultants and Technocrats pvt.ltd.

- (iv) Final Order No. A/94539/2016-WZB/STB, dated 14-12-2016 in Appeal No. ST/286/2009-Mum in the case of Security Guards Board for Greater Bombay and Thane District v/s. CCE, Thane-II.
- (v) Final Order No. ST/A/53407/2018-CU(DB), dated 10-12-2018 in Appeal No. ST/55694/2013 by the CESTAT Principal Bench New Delhi in the case of KassaFinwestPvt.ltd. V/s CCE, ST, New Delhi.
- (vi) Misc. Order No. 376/2011, dated 8-8-2011 in Appeal No. ST/111/2008 by the CESTAT Sub zonal Bench, Bangalore in the case of Sri Bhagvathy Traders V/s CCE Cochin.
- (vii) Final Order No.A/31540/2018, dated 25-10-2018 in Appeal No. ST/1862/2010 by the CESTAT, Regional Bench, Hyderabad in the case of Karvy Consultants V/s CCE & ST Hyderabad II

7. The applicant has asked the following question seeking Advance Ruling on the same:

“We hereby want your opinion about following things:

- (i) *Our stand to charge the GST@18% only on establishment charges of Rs.12/- (i.e. after abatement of wages etc. paid to guards) and not on whole of Rs.112/-.*
- (ii) *Whether we can take the GST credit if we follow the above method of charging GST?”*

DISCUSSION & FINDINGS:

8. We have considered the submissions made by the applicant in their application for advance ruling, the additional submissions submitted by them vide email dated 24.09.2020 as well as the arguments/discussions made by their representative Shri Hasit Dave, Advocate at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

9. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

10. As per the submission of the applicant, they are providing security to their clients for which they are charging the amount which they are paying to the guards as per Minimum Wages Act plus 12% as establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc and they are charging GST @ 18% on Rs.112/-(100 + 12% establishment charges) which they collect from their client and are paying GST to the Government in the same way since the incorporation of GST. The applicant has stated that they have come across a few judgements in similar cases wherein the authorities have decided to charge the taxes after abatement towards payment made on account of wages, salaries, contribution made towards PF, ESIC etc i.e. to charge the taxes after deduction of wages etc. paid to security guards and in their case GST @18% can be charged on establishment charges of Rs.12 only and not on whole amount of Rs.112/-. The applicant has referred to a few case laws to support their contention as enlisted at para-6 above. They have asked the following question seeking Advance Ruling on the same:

“We hereby want your opinion about following things:

- (i) Our stand to charge the GST@18% only on establishment charges of Rs.12/- (i.e. after abatement of wages etc. paid to guards) and not on whole of Rs.112/-.
- (ii) Whether we can take the GST credit if we follow the above method of charging GST?"

11. On going through the submissions of the applicant as well as the questions raised by them seeking Advance ruling on the same, we find that the main issue to be examined is whether their stand to charge the GST@18% only on establishment charges (i.e. after abatement of wages etc. paid to guards) and not on whole amount (which includes the wages etc. paid to the Security Guards as well as the amount collected from their client towards establishment charges for the administration of their office) is correct or otherwise and whether under the said circumstances, the applicant can take the GST credit or otherwise if they follow the said method of charging GST. But, before examining the issue, we are required to find out under what heading, sub-heading or group, the services supplied by the applicant are covered, for which we will be required to refer to Notification No.11/2017-Central Tax(Rate) dated 28.06.2017, which contains the Chapter, Section and Heading of classification of services alongwith their GST rates. On going through the said notification, we find that the Security services provided by the applicant falls under Heading 9985, Group 99852 and Service code(Tariff) 998529, wherein GST payable is 18% (9% CGST + 9% SGST). The same appears at Entry No.23 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 and reads as under:

Sl.No.	Chapter	Description of Service	Rate	Condition
23.	Heading 9985 (Support services)	(i) Supply of tour operators services. <i>Explanation.-</i> "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)] 2. The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		(ii) Support services other than (i) above	9	----

As per Annexure to Notification No.11/2017-Central Tax(Rate) dated 28.06.2017, the same appears at Sr.No.419 and reads as under:

Sl.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Description of Service
	Heading 9985		Support services
410	Group 99852		Investigation and security services.
411		998521	Investigation services
412		998522	Security consulting services
413		998523	Security systems services
414		998524	Armoured car services
415		998525	Guard services
416		998526	Training of guard dogs
417		998527	Polygraph services
418		998528	Fingerprinting services

419		998529	Other security services nowhere else classified
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12. We find that the applicant has cited various judgements as detailed below, which support their claim that reimbursable expenses are not to be added/abated to/in the assessable value of GST for charging GST on Security Guard Services and have submitted scanned copies of the same along with their submission through email:

- (i) Final Order No. 71115/2016, dated 2-12-2016 in Appeal No. ST/70025/2015-CU(DB) and Cross Objection No. ST/CROSS/70318/2016 by CESTAT, Regional Bench, Allahabad in the case of CCE & ST Agra V/s Antz Management Consultancy Pvt Ltd.
- (ii) Judgement of the High Court of Delhi dated 30.11.2012 in the case of Intercontinental Consultants & Technocrats Pvt Ltd V/s Union of India.
- (iii) Judgement dated 07.03.2018 of the Supreme Court of India in the case of Union of India v/s. Intercontinental Consultants and Technocrats pvt.ltd.
- (iv) Final Order No. A/94539/2016-WZB/STB, dated 14-12-2016 in Appeal No. ST/286/2009-Mum in the case of Security Guards Board for Greater Bombay and Thane District v/s. CCE, Thane-II.
- (v) Final Order No. ST/A/53407/2018-CU(DB), dated 10-12-2018 in Appeal No. ST/55694/2013 By the CESTAT Principal Bench New Delhi in the case of KassaFinwestPvt.ltd. V/s CCE, ST, New Delhi.
- (vi) Misc. Order No. 376/2011, dated 8-8-2011 in Appeal No. ST/111/2008 by the CESTAT Sub zonal Bench, Bangalore in the case of Sri Bhagvathy Traders V/s CCE Cochin.
- (vii) Final Order No. A/31540/2018, dated 25-10-2018 in Appeal No. ST/1862/2010 by the CESTAT, Regional Bench, Hyderabad in the case of Karvy Consultants V/s CCE & ST Hyderabad II

13. On going through the aforementioned judgements, we find that the issues discussed in all of them are with respect to the aspect of valuation and pertain to the pre-GST era i.e. when Service Tax was chargeable on services provided, under the Finance Act, 1994. Further, in one of the judgements relied upon by the applicant which pertains to judgement of the Hon'ble Supreme Court of India in the case of Union of India &Anr. v/s. M/s. Intercontinental Consultants and Technocrats pvt.ltd (Civil Appeal No.2013 of 2014)(mentioned at Sr.No.iii above), it is observed that the said case law pertains to the period prior to 14th May, 2015, when the legislative amendments were not brought out in the Finance Act, 1994. Further, we also find that the aforementioned case has been relied upon in the case of KassaFinwestpvt.ltd. v/s. CCE, ST, New Delhi (mentioned at Sr.No.v above) and also in the case of Karvy Consultants v/s. CCE & ST, Hyderabad-II(mentioned at Sr.No.vii above). However, these cases do not hold water in the GST era, since the provisions with respect to valuation are very clear in the present era of GST and are already a part of the CGST Act itself. 'Consideration' has been clearly defined in Section 2(31) of the CGST Act, 2017. Section 15 of the CGST Act, 2017 elaborates in great detail, the items that are required to be included in the value of supply. Sub-section (2) of Section 15 itself starts with the words "The value of supply shall include—" and goes on to elaborate the items required to be included in the value of supply. Sub-section (3) of Section 15 specifies the items which are not to be included in the value of supply. Thus, all the aspects of valuation of supply have been covered in the CGST Act itself. We are, therefore, of the opinion that relying upon the aforementioned judgements, does not help the present cause of the applicant.

14. In this regard, we would like to refer to the definition of 'Consideration' as appearing at Section 2(31) of the CGST Act, 2017, which reads as under:

"(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) 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 by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”

15. Thus, the above definition of ‘consideration’ clearly includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. It also 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 by any other person but shall not include any subsidy given by the Central Government or a State Government. In the instant case, the applicant themselves have explained that out of an amount of Rs.112/- charged from the clients, Rs.100/- is paid as salary to the Security Guard and the remaining Rs.12/- are establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc. and that they are charging 18% GST on the total amount of Rs.112/-. However, they have also stated that based on the various judgements, they have referred to in their application, they intend to charge GST @18% only on the establishment charges of Rs.12/- received from their clients. However, as can be seen from the above, consideration would include the entire payment received by the applicant from their clients and GST would be payable on the entire amount collected by them from their client, which includes the salary amount/wages etc. to be paid to the Security Guards as well as the establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc.

16. We would also like to refer to Section 15 of the CGST Act, 2017, which pertains to Valuation of taxable supply and reads, as under:

“15.(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 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;

(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.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another’s businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term “person” also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.”

17. On going through the above, it can be seen that Section 15(1) clearly stipulates that the value of 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. Further, sub-section(2) of Section 15 elaborates in detail, the items that are required to be included in the value of supply, whereas sub-section(3) of Section 15 specifically elaborates the items that are not to be included in the value of supply. Thus, it is very much apparent that all the aspects of valuation of supply have been covered in the CGST Act itself. Therefore, taking into the view the definition of ‘consideration’ and the aspect of ‘valuation of supply’ as discussed above, it is apparent that the applicant is left with no option but to charge/pay GST on the entire amount received by them from their clients. We therefore, conclude that the applicant has to charge/pay GST @ 18% on the entire amount received by them from their clients, which includes the salary/wages etc. to be paid to the Security Guards as well as the amount received from their clients as establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc.

18. The next issue to be discussed is whether the applicant can take credit of GST, if they follow the method of charging/paying GST only on the amount received by them as establishment charges from their clients. However, as discussed in the foregoing paras, it is amply clear that the applicant cannot follow the method of charging/paying GST only on the amount received by them towards establishment charges from their client, since it would be contrary to the provisions of Section 15 of the CGST Act, 2017. In view of the

above, we find that the applicant would be eligible to take the GST credit if they follow the procedure of charging/paying GST on the entire amount received by them from their clients, which includes the salary/wages etc./ to be paid to the Security Guards as well as the amount received from their clients as establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc., subject to the fulfilment of the conditions/provisions envisaged in the relevant sections and rules of the CGST Act, 2017 and the CGST Rules, 2017 respectively.

19. In the light of the foregoing, we rule as under:

R U L I N G

Question-1:We hereby want your opinion about our stand to charge the GST@18% only on establishment charges of Rs.12/-(i.e. after abatement of wages etc. paid to guards) and not on whole of Rs.112/-?

Answer: The applicant M/s. Gujarat Industrial Security Force Society (GISFS) has to charge/pay GST @ 18% on the entire amount received by them from their clients, which includes the wages etc. to be paid to the Security Guards as well as the amount received from their clients as establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc. for the reasons discussed hereinabove.

Question-2:Whether we can take the GST credit if we follow the above method of charging GST?"

Answer: The applicant would be eligible to take the GST credit if they follow the aforementioned procedure of charging/paying GST as mentioned in the Answer to Question-1 above, subject to the fulfilment of the conditions/provisions envisaged in the relevant sections and rules of the CGST Act, 2017 and the CGST Rules, 2017 respectively.

(SANJAY SAXENA)

MEMBER

Place: Ahmedabad

Date: 14.10.2020.

(MOHIT AGRAWAL)

MEMBER