



HARYANA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, HARYANA
VANLIYA BHAWAN, PLOT NO. 1-3, SECTOR-5,
PANCHIKULA-134151
ADVANCE RULING No. HR/ARL/20/2021-22 DATED



Name & Address of the Applicant	M/s The Close-North Apartment Owner's Association, The Close North, Nirvana Country, Sector-50, Gurugram, Haryana 122018
GSTIN of the Applicant	06AACAT4852E1ZL
Provisions under which the advance ruling has been sought by the applicant	Section 97(2) of CGST/HGST Act, 2017 (a) Classification of goods and/or services or both. (b) Determination of the liability to pay tax on any goods or services or both. (c) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Dates of Hearing:	18.05.2022, 05.07.2022, 08.07.2022

1. APPLICANT'S ELIGIBILITY FOR SEEKING AN ADVANCE RULING:

- 1.1 To file an application before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as HGST Act, 2017). Since the provisions of both the Acts are *parimateria*, any reference to provisions of CGST Act, 2017 in this order should be construed as a reference to corresponding provisions in HGST Act, 2017 as well.
- 1.2 Sections 97(2) (a)(b)& (c) read with Section 95 of the CGST Act, 2017 prescribes that Advance Ruling may be sought inter alia on the question of (a) Classification of goods and/or services or both. (b) Applicability of a notification issue under the provisions of this Act. (c) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
- 1.3 There is no bar on an applicant from seeking an Advance Ruling in terms of Section 98(2) of CGST Act, 2017 in as much as the questions raised by the applicant, the same are neither pending nor decided in any proceedings in

the case of the applicant under the provisions of CGST/IGST Act, 2017. As per the declaration given by the applicant in form ARA-01 the issue raised by the applicant is neither pending nor decided in any proceeding under any of the provisions of the Act, against the applicant, therefore, he is eligible to seek an Advance Ruling under the above provisions. Besides the applicable fees in the matter has been paid by him so the case is being heard on merits.

2. BRIEF FACTS OF THE CASE:

2.1 The Close North Apartment Owner's Association (hereinafter referred to as the "Applicant") is an RWA registered under the Haryana Registration and Regulation of Societies Act, 2012 having its registered place of business at Nirvana Country, Sector 50, Gurugram, Haryana – 122018 and is duly registered under the provisions of Goods and Services Tax vide GSTIN 06AACAT4852E1Z1.

2.2 The Applicant is engaged in providing maintenance service and other related service to its members like managing day to day problems of the members/residents, organising events, managing facilities in the apartments and complexes and safeguarding the rights of residents of the RWA.

2.3 The Applicant has received a sanction for Single Point Supply connection under Bulk Supply (Domestic) category by adhering to the Haryana Electricity Regulatory Commission (Single point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial cum Residential Complex of Developers) Regulations 2013 ('hereinafter referred to as the Electricity Regulations, 2013').

2.4 The applicant referred Para 4 of the Electricity Regulations, 2013, which has been reproduced as under:

"4. Supply of electricity by the distribution licensee to the GHISs

4.1 Group Housing Societies seeking new electricity connections

4.1.1 All Group Housing Societies seeking new electricity connections which are bounded with walls, have restricted entry, having 20 (twenty) or more residential units and irrespective of connected load shall, henceforth, have the following two options for supply of electricity by the distribution licensee to the GHIS.

Option-1: Supply of electricity at a Single Point to the GHIS at 11 kV or higher voltage depending upon the feasibility under Bulk Supply (Domestic) schedule of tariff.

Option-2: Individual electricity connections to the residents / members and for common services / NDS loads under relevant schedules of tariff.....

(relevant extract only)

*4.1.2 The distribution licensee, on an application as per Option-1 from the GHIS/Developer/RWA owning/ managing such GHIS, shall give Single Point Supply to the GHIS at 11 kV or higher voltage, depending upon the feasibility, for making electricity available to the residents/members residing in the Colony and for common services/ non-domestic loads. **Distribution of***

electricity within the GHS shall be owned and managed by the GHS/ Developer/ RWA."

2.5 The Electricity Regulations, 2013 have been amended to Single Point Supply to Employers' Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ Regulations, 2020 ("hereinafter referred to as the Electricity Regulations, 2020) vide notification dated 22 April 2020 issued by the Haryana Electricity Regulatory Commission. The relevant extract has been reproduced hereunder for easy reference:

"4. Supply of electricity by the distribution licensee to the Group Housing Societies (GHSs)

4.1

4.2 *The distribution licensee, on an application from the GHS, as per clause (a) shall give Single Point Supply to the GHS at 11 kV or higher voltage, depending upon the feasibility, for making electricity available to the residents/members residing in the Colony and for common services/ non-domestic loads. **Provided the distribution of electricity within the GHS shall be owned and managed by the GHS."***

He has also referred to the para 6.6 of the E.R, 2020 which is as following:-

"a) The Employer/GHS/Users Associations will not charge the Residents/Individual Consumer, Common Services and other category loads in the Colony/GHS/ Complex for electricity supplied, at a rate higher than the tariff for Domestic Supply (DS)/other relevant category, approved by the Commission from time to time."

2.6 The applicant stated that electricity supplied by the State Electricity Board and there is a Single Point Bulk connection or a common electricity meter for the entire complex which is in the name of the Applicant. The Applicant has, in turn, installed the sub-meters in the premises of the individual flat owners for measuring the electricity consumption of each such unit and also a separate sub-meter is installed for units consumed towards common area electricity. This is done because the distribution of electricity within the apartment complex is to be owned and managed by the Applicant as required under para 4.1.2 of the Electricity Regulations 2013 and subsequently para 4.2 of the Electricity Regulations 2020.

2.7 The electricity bill issued by the State Electricity Board is received in the name of the Applicant. Thereafter, the Applicant raises invoice/ bills in the name of individual flat owners based on the electricity consumed by the individual unit under the following heads:

- Actual reading as per sub-meter – Individual user is billed on the basis of actual electricity consumed as recorded in the sub-meter installed at their premises. No GST is being paid by the Applicant on electricity charges recovered from individual users as per sub-meter readings.
- Back up electricity charged – Individual user is billed on the basis of actual DG set units consumed at the decided rate per unit. GST @ 18% is being charged on this amount in the electricity bill raised on the individual users.



- Common Area Electricity or CAE charges – The Applicant recovers common area electricity charges for use in corridors, pathways, gardens, club house, swimming pool, lifts etc. from individual users on per square feet basis based on the super built-up area owned by the users.

2.8 Since, RWA has obtained a Single Point Bulk supply connection under para 4.1 of the Electricity Regulations 2013 amended vide Electricity Regulations 2020, the distribution of electricity within the apartment complex would be owned and managed by it and GST would not be leviable on the CAE charges recovered by the Applicant on actual basis from the individual users.

2.9 QUESTION(S) ON WHICH ADVANCE RULING HAS BEEN SOUGHT:

- Question 1. Whether GST is applicable on the Common Area Electricity charges collected, on actual basis, by the Applicant from the residents of the apartment complex, or not?
- Question 2. Whether GST is applicable on the Common Area Electricity charges collected, with a margin, by the Applicant from the residents of the apartment complex, or not?
- Question 3. What should be the basis of allocation of Common Area Electricity Charges to the units in the apartment complex?

3. APPLICANT'S VIEW POINT AND SUBMISSIONS ON ISSUES ON WHICH THE ADVANCE RULING IS BEING SOUGHT:

3.1 At the outset, the Applicant would like to state that the entry no. 53 of List II of Seventh Schedule of the Constitution of India specifically covers "taxes on the consumption or sale of electricity", thus making sale of electricity a State subject wherein the state government has exclusive right to make laws.

3.2 The power to levy tax on entries in List-I of Seventh Schedule of the Constitution of India continues to be with Union Government and this does not include sale of electricity within its ambit. Further, while all the conflicting entries in these schedules have either been removed or been modified by clause 17 of The Constitution (One Hundred & First Amendment) Act, 2017, right to tax consumption or sale of electricity continues to remain under List II of Seventh Schedule and therefore the state government alone has the right to tax this akin to taxes on land and building, sale of liquor for human consumption etc. Also, power to impose Goods & Service Tax in India is governed by Article 246A & Seventh Schedule of the Constitution of India and thus right to levy tax on electricity is not covered under this.

3.3 Applicant would like to state that Electricity or electrical energy has been held to be goods by the Hon'ble Supreme Court re *Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur- 1969 (2) SCR 939*. Further, the Constitution Bench of the Hon'ble Supreme Court in *State of A.P. etc. v. National Thermal Power Corpn. Ltd. and Ors. etc. (2002-TIOL-107-SC-CT)* held that electricity though an intangible object is 'goods' covered by Entry 54 of List II of Seventh Schedule to the Constitution of India.

3.4 Hence 'electricity' is goods and also excisable goods which found a mention in the erstwhile Central Excise Tariff Act, 1985. Even under GST "Electrical energy" has been classified as goods and specific exemption has been granted vide sl. No. 104 of Notification No. 2/ 2017- Central Tax (Rate) dated 28 June 2017. If that had not been the case there was no necessity of specifically exempting supply of electrical energy from the payment of GST.

35 Therefore, electricity or electrical energy is a movable property though it is not tangible and any supply of electricity and money realised from such supply is towards supply of goods, it would tantamount of trading in goods.

36 The Applicant, having received Supply sanction from the State Electricity Board, is purchasing electricity from the State Electricity Board and thereafter supplying it to individual users as per the terms of the Electricity Regulations, 2013 and the amended Electricity Regulation, 2020.

37 Thus, in light of the constitutional provisions and the Apex Court decisions cited in para 32 and 33 above, purchase of electricity by the Applicant and supplying the same to the individuals users, in their apartments or in the common area of the residential complex, is merely an act of trading in electricity or electrical energy and thus exempt under GST as per Notification No. 2/2017-Central Tax (Rate) dated 28 June 2017.

38 Even otherwise, the Applicant is supplying electricity to the residents as per the sanction received under the Electricity Regulations, 2013 issued by the Haryana Electricity Regulatory Commission, an independent statutory body corporate established under the provision of the Haryana Electricity Reform Act, 1997, passed by the Haryana State Legislative Assembly on 22nd of July 1997.

39 Further, "Transmission or distribution of electricity by an electricity transmission or distribution utility" has been specifically exempted from GST vide sl. No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017. Further, as per para 2(i) of Notification no. 12/2017-Central Tax (Rate) dated 28 June 2017, "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government".

40 Upon a co-joint reading of the Electricity Regulations, 2013 / Electricity Regulations, 2020 and the exemption granted vide sl. No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017, it is submitted that the Applicant is an entity entrusted with the function of distribution of electricity through the Single Point Supply connection under Bulk Supply (Domestic) scheme of the Haryana State Government and thus qualifies as an electricity transmission or distribution utility and therefore exempt from GST vide sl. No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 undertaking supply of electricity i.e. goods, exempted vide sl. No. 104 of Notification No. 2/2017-Central Tax (Rate) dated 28 June 2017.

41 The Applicant further submits that the CBIC vide Circular no. 34/8/2018-684 dated 1 March 2018 ("Circular"), clarified that

"(1) Services by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017-CT (R), Sl. No. 25. The other services such as, -

- i. Application fee for releasing connection of electricity;
- ii. Rental Charges against metering equipment;
- iii. Testing fee for meters/ transformers, capacitors etc.;
- iv. Labour charges from customers for shifting of meters or shifting of service lines;
- v. charges for duplicate bill; provided by DISCOMS to consumer are taxable."

42 Vide the above Circular, the CBIC clarified that services by way of distribution of electricity by an electricity distribution and transmission utility are alone exempt from GST, thereby making application fee towards electricity

connection, rental charges towards metering equipment, etc chargeable to GST. However, the Gujarat High Court re **Torrent Power Limited vs Union of India in Special Civil Application No. 5343 Of 2018** dated 19 December 2018 held that paragraph 4(1) of the impugned Circular as being *ultra vires* and was thereby struck down. The High Court further held that charges such as application fee, meter rent, testing fee, etc collected by Torrent Power Limited are part of composite supply of which principal supply is the actual supply of electricity and therefore the entire composite supply is exempt from tax.

3.13 Further, the following clarification issued by CBIC vide F.No.332/04/2017-TRU through FAQs on levy of GST on supply of services to Co-operative Society states that:

"Similarly, GST is not leviable on Non-Agricultural Tax, Electricity Charges etc. which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST."

3.14 The CBIC has adequately clarified that GST would not be leviable on electricity charges collected under other statutes from individual flat owners. The CAE charges are collected by the Applicant in terms of Electricity Regulations, 2013/ Electricity Regulations, 2020 through the Single Point Supply connection under Bulk Supply (Domestic) scheme of the Haryana State Government and therefore outside the purview of GST.

4. PERSONAL HEARING:

Shri Bhupendra, Chartered Accountant appeared on behalf of the applicant before the Authority of Advance Ruling and reiterated the details which has already been submitted in the application dated 26.04.2022 besides submitting the additional documents in support of his contentions.

5. DISCUSSION AND FINDING:

5.1 We have carefully gone through the application including the written as well as verbal submissions made by the Applicant at the time of personal hearing. On critical examination of the application, it has been observed that the main issue involves in the said application is that whether the GST is liable to be paid on Common Area Electricity (CAE) charges recovered by RWA from the member of the society or not?

5.2. In the instance case, the applicant recovers electricity charges for use in corridors, pathways, gardens, club house, swimming pool, lifts etc. from the each individual user on per square feet basis based on the super built-up areas of each flat. The electric supplied by the State Electricity Board for the entire complex by single point connection and common electricity meter is installed for it.

5.3. The first two questions relates to taxability of amount recovered from the members of society as Common Area Electricity (CAE) charges, which are paid by the applicant to the State Electricity Board for the electricity consumed towards Common Area.

5.4 The applicant has also stated that they have installed the sub-meters for units consumed for Common Area electricity and the amount is recovered from the each individual, flat owners for usage of corridors, pathways, gardens, club house, swimming pool, lifts etc.



5.5 The issue is being examined by us considering all the facts available on the record and legal provisions with reference to it. It is observed that a similar issue has been decided by the KAAR in its order dated 17.09.2019 in the case of Prestige South Ridge Apartment Owners' Association (Advance Ruling No. KAR ADRG 42/2019, dated 17-9-2019 [2019 (30) G.S.T.L. 107]. The operative part of this order with reference to the issue at hand is as under:-

"The applicant, in this regard, admitted that they pay electricity charges and recover the amount from members for the electric power consumed towards lighting of common areas. Further they propose to recover the actual charges paid to Electricity Suppliers, in respect of the power consumption for common area, from the members proportionate to the carpet area owned by them, by raising a debit note indicating the proportionate electricity charges.

The electricity bill received in relation to the consumption of electricity for the common utilities is in the name of the applicant. The applicant is not involved in the supply of electrical energy to the members but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments and for this the electricity consumed by them becomes an input. Though the electricity bill is distributed to all its members, it is not the consideration for the supply of electrical energy to the members but the value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.

Hence this value of electricity charges separately shown in the invoices is to be added to the considerations shown towards the same service of upkeep and maintenance charged to individual members and then the consideration for the supply of such service is to be arrived and the taxable value shall be determined."

This authority too have similar views on the matter i.e. the value of electricity charges separately shown in the invoice is to be added to the taxable turnover under the provisions of the CGST/HGST Act, 2017.

5.6 It is concluded that an amount recovered by the applicant from its members on the basis of per square foot on super build up area of each unit, GST is liable to be recovered from him @ 18 % [9 % CGST and 9 % HGST] under CGST/HGST Act, 2017 as amended.

5.7 The third question asked by the applicant is not covered under section 97(2) of the CGST/HGST Act, 2017 as amended.

6. Ruling:

In view of above discussion and findings, we Pass the following Order:-

Question 1.	Whether GST is applicable on the Common Area Electricity charges collected, on actual basis, by the Applicant from the residents of the apartment complex, or not?
Ans.	@ 18 % [9 % CGST and 9 % HGST] Yes
Question 2.	Whether GST is applicable on the Common Area Electricity charges collected, with a margin, by the Applicant from the residents of the apartment complex, or not?

Ans.	Yes.
Question 3.	What should be the basis of allocation of Common Area Electricity Charges to the units in the apartment complex?
Ans.	Not Applicable

This Ruling is Valid only within the jurisdiction of Advance Ruling Authority, Haryana and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under section 104(1) of the Act, ibid.


(Sunder Lal)

Member CGST


(Kumud Singh)

Member SGST

o/c

Memo No. 222 dated 31.08.2022

Regd. AD/Speed Post

M/s The Close-North Apartment Owner's Association,
The Close North, Nirvana Country, Sector-50,
Gurugram, Haryana-122018

Copy to:

1. The Additional Commissioner, Central Goods & Service Tax Commissionerate, Plot No. 5, Sector 25, Panchkula (Haryana).
2. The Deputy Excise and Taxation Commissioner (ST), Range- Gurgaon, District- Gurgaon (South), Ward- Gurgaon (South) Ward-7, Haryana.
3. The Deputy/ Assistant Commissioner, Central Goods & Service Tax, Commissionerate:- Gurugram, Division:- South-1, Range:- R-18, Haryana.

Note: An Appeal against this advance ruling order lies before the Haryana Appellate Authority for Advance Ruling for Goods and Service Tax Haryana Vanijya Bhawan, Plot No. 1-3, Sector 5, Panchkula-134 151 (Haryana), within 30 days from the date of service of this order.