THE WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14, Beliaghata Road, Kolkata – 700015

(Constituted under Section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Yogesh Sugdeo Chitte
Joint Commissioner, CGST & CX

Jaydip Kumar Chakrabarti
Additional Commissioner, SGST

Preamble

a) A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

b) Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	**DH Maintenance Limited**
Address	16, Strand Road, Kolkata, West Bengal, 700001
GSTIN	19AAFCD2811E1Z0
Case Number	WBAAR 37 of 2025-26
ARN	AD190326017617X
Date of application	March 23, 2026
Jurisdictional authority (State)	Strand Road Charge
Jurisdictional authority (Centre)	BBD Bag I Division, Kolkata North Commissionerate

Order number and date	10/WBAAR/2026-27 Dated 01.09.2026
Applicant's representative heard	Mr Vikram Khaitan, CA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like manner except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the above, henceforth, for the purposes of these proceedings, the expression "GST Act" would mean both the CGST Act and the WBGST Act.

1.2 The applicant, M/s DH Maintenance Limited, is engaged in providing common area maintenance and facility management services in respect of a commercial building known as "Harinath Heritage" situated at 16, Strand Road, Kolkata, West Bengal. The applicant also pays electricity charges to the electricity distribution company, CESC Limited, in respect of electricity consumed in the commercial building and proposes to recover the actual electricity charges from the respective unit holders based on their individual consumption towards HVAC and non-HVAC usage, along with common area electricity consumption distributed among the unit holders on the basis of their respective super-built-up area. The applicant has sought an advance ruling on the GST implications of such reimbursement of electricity charges, particularly where the amount recovered from the unit holders is limited to the actual amount charged by CESC, without any profit element.

1.3 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made thereunder, seeking an advance ruling in respect of the following question:

> Whether recovery of electricity charges by the Applicant, based on the working submitted, from occupants/unit holders, at actual cost based on consumption, as charged by the electricity distribution company without any markup, including electricity attributable to Heating, Ventilation, and Air Conditioning (HVAC) operations and common area consumption, qualifies as reimbursement in the capacity of a pure agent and whether GST would be leviable on the same, more specifically, in terms with Circular No. 206/18/2023-GST dated 31-10-2023 issued in this regard by Ministry of Finance, Department of Revenue, (Tax Research Unit).

1.4 The aforesaid question on which the advance ruling is sought is found to be covered

under clause (c) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 At the outset, the Applicant submits that while interpreting a taxing statute, the principle and object of the Act have to be kept in mind and the letter of the law has to be followed. If the words of the statute are clear and unambiguous, the same are required to be given effect to. The Applicant submits that the present application has been filed to obtain clarity regarding the proposed mechanism for recovery of electricity charges from the unit holders of the commercial building and to avoid any unnecessary dispute in future.

2.2 The Applicant submits that the Applicant is engaged in maintenance of the commercial building and, along with such maintenance activity, is also engaged in paying electricity charges to the electricity distribution company, namely CESC Limited, and recovering the same from the respective unit holders. The Applicant proposes to recover the electricity charges from the unit holders strictly on the basis of the actual electricity charges incurred by it, without adding any profit element or markup. The Applicant submits that the proposed mechanism is in accordance with Circular No. 206/18/2023-GST dated 31.10.2023 issued by the Ministry of Finance, Department of Revenue, Tax Research Unit, which provides clarification regarding the applicability of GST on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees or occupants.

2.3 The Applicant places reliance on Circular No. 206/18/2023-GST dated 31.10.2023, wherein clarification has been issued regarding the applicability of GST on reimbursement of electricity charges by real estate companies, malls, airport operators etc. from their lessees or occupants. The Applicant submits that, as clarified in the said Circular, where electricity is being supplied bundled with renting of immovable property and maintenance of premises, such electricity supply may form part of a composite supply, with renting of

immovable property being the principal supply and electricity being an ancillary supply, where the electricity is billed separately by the supplier. However, where the electricity is supplied by the real estate owner, Resident Welfare Association, real estate developer, etc. as a pure agent, it will not form part of the value of the supply where the conditions prescribed for pure agent are satisfied.

2.4 The Applicant submits that the Applicant's proposed mechanism of recovery of electricity charges is squarely in accordance with the aforesaid Circular. The Applicant receives the electricity supply from CESC Limited and thereafter recovers the actual electricity charges from the respective unit holders. The Applicant does not propose to charge any additional amount or retain any profit in respect of such electricity charges. The amount recovered from the unit holders would correspond to the amount payable to CESC Limited, subject to the allocation mechanism explained by the Applicant. Thus, no profit element is involved in the recovery of electricity charges from the unit holders.

2.5 The Applicant submits that, for the month of January 2026, CESC Limited raised an electricity bill amounting to INR 20,19,811/- after rebate for making payment within the due date through RTGS, NEFT, LC, Net Banking or other E-payment modes, against chargeable consumption of 196,520 KWH units. Accordingly, the average cost of electricity came to INR 10.28 per KWH unit. Electricity consumption comprised consumption other than HVAC in individual offices amounting to 94,911.88 KWH units, electricity consumption specifically towards HVAC in individual offices amounting to 61,759.8 KWH units, and common area consumption of 39,848.32 KWH units. The Applicant proposes to recover the corresponding electricity charges from the respective unit holders based on actual consumption and the applicable allocation mechanism.

2.6 The Applicant further submits that the common area electricity consumption is proposed to be recovered on the basis of the total bill raised by CESC Limited after reducing the amount already recovered towards electricity consumption in individual offices, including HVAC and non-HVAC consumption. The balance amount attributable to common area electricity consumption would be distributed among the unit holders based on the super-built-up area of their respective units and recovered from them at actuals. The total billable super-built-up area of the commercial building is 3,98,099 square feet.

2.7 The Applicant submits that the proposed recovery mechanism is based entirely on actual electricity consumption and the actual amount charged by CESC Limited. The Applicant has specifically demonstrated the working of the proposed mechanism with reference to the January 2026 electricity bill. The total CESC bill was INR 20,19,811/-. Electricity consumption other than HVAC was calculated at INR 10,24,267/-, electricity

consumption towards HVAC was calculated at INR 6,34,700/- and the balance amount recoverable towards common area consumption was INR 3,60,844/-. The Applicant submits that the recovery of the aforesaid amount does not involve any profit or additional consideration in the hands of the Applicant.

2.8 The Applicant submits that, in view of the aforesaid mechanism, it would be deemed to be acting as a pure agent in respect of the electricity supply. The Applicant is merely making payment to CESC Limited and recovering the corresponding electricity charges from the unit holders. The Applicant does not alter the nature or value of the electricity supplied and does not retain any amount as profit from such recovery. Accordingly, the electricity charges recovered from the unit holders should be excluded from the value of the Applicant's supply of maintenance services, subject to fulfilment of the conditions prescribed under the GST law relating to pure agents.

2.9 In support of the above submission, the Applicant places reliance upon Rule 33 of the Central Goods and Services Tax Rules, 2017, which provides that, notwithstanding anything contained in the relevant provisions, expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply where the prescribed conditions are satisfied. The relevant conditions include that the supplier acts as a pure agent of the recipient when making payment to the third party on authorisation by such recipient, that the payment made by the pure agent on behalf of the recipient is separately indicated in the invoice issued by the pure agent to the recipient, and that the supplies procured by the pure agent from the third party as a pure agent of the recipient are in addition to the services supplied by the pure agent on his own account.

2.10 The Applicant submits that, when Circular No. 206/18/2023-GST dated 31.10.2023 is read conjointly with Rule 33 of the CGST Rules, 2017, the Applicant would qualify as a pure agent in respect of reimbursement of electricity charges, provided that the conditions prescribed under Rule 33 are fulfilled. The Applicant submits that the use of the expression “deemed” in the aforesaid Circular in relation to a person acting as a pure agent indicates that once the prescribed conditions are satisfied, the reimbursement of electricity charges would not form part of the value of the maintenance service for the purpose of levy of GST.

2.11 The Applicant further submits that departmental circulars are generally binding on the departmental authorities and serve as authoritative guidelines for implementation of the law. Therefore, reliance is placed upon Circular No. 206/18/2023-GST dated 31.10.2023, particularly in view of the fact that the Applicant's proposed recovery of

electricity charges is on an actual basis and without any profit element. The Applicant submits that the reimbursement of electricity charges as a pure agent should consequently be excluded from the value of the Applicant's maintenance service for the purpose of payment of GST.

2.12 Without prejudice to the above submissions, the Applicant submits that electricity/electrical energy itself possesses the characteristics of goods. The Applicant draws attention to the relevant provisions of the Electricity Act, 2003 and the Customs Tariff Act, 1975. Electricity is covered under the definition of "goods" under the relevant statutory framework and is classified under Chapter Heading 2716 of the Customs Tariff. The Applicant further submits that the erstwhile Central Excise Tariff also incorporated electrical energy under Heading 27160000 as a product classifiable as a good. The West Bengal Value Added Tax Act, 2003 also classified "Electricity" as a good under Schedule A under Entry No. 13. The Applicant submits that the nature of electricity as goods is therefore recognised under various statutory enactments.

2.13 The Applicant further refers to the definition of "electricity" under Section 2(23) of the Electricity Act, 2003, under which electricity means electrical energy generated, transmitted, supplied or traded for any purpose. The definition also recognises the generation, transmission, supply, distribution or redistribution of electricity. The Applicant submits that electricity is capable of being supplied and traded and is therefore a distinct commodity capable of being dealt with independently.

2.14 The Applicant also submits that the statutory framework under the Electricity Act recognises the commercial nature of electricity supply. The Applicant refers to the definitions relating to "consumer", "licensee", "trading" and "purchase of electricity" under the Electricity Act, 2003 and submits that electricity is capable of being purchased and resold or redistributed. The Applicant further refers to Regulation 4.2.3 of the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulations, 2013, which recognises the recovery of expenditure from individual owners or occupants of dwelling units in specified circumstances.

2.15 The Applicant places further reliance upon the observations of the Hon'ble Apex Court in the case of AP v. National Thermal Power Corporation Limited, (2002) 5 SCC 203, particularly paragraphs 20 to 23, wherein the nature of electricity as goods and its characteristics have been considered. The Applicant submits that the Hon'ble Supreme Court has recognised that electricity possesses the essential characteristics of goods notwithstanding its peculiar nature and the fact that its generation and consumption take place almost simultaneously.

2.16 The Applicant further submits that the Hon'ble Apex Court, in the aforesaid decision, considered the nature of supply and consumption of electricity and observed that electricity is capable of being generated, transmitted and supplied through the relevant distribution mechanism. The Applicant submits that the fact that electricity is consumed simultaneously with its supply does not alter its fundamental character as electricity supplied for consideration.

2.17 The Applicant submits that the electricity purchased by it from CESC Limited is not generated by the Applicant and is not part of the Applicant's own maintenance activity. The Applicant merely makes payment to CESC Limited for electricity consumed in the commercial building and subsequently recovers the actual corresponding amount from the respective unit holders. Thus, the Applicant acts as an intermediary or pure agent for the limited purpose of making payment of electricity charges on behalf of the unit holders. There is no element of profit, markup or additional consideration in the proposed recovery.

2.18 The Applicant further submits that the electricity consumption in the commercial building is capable of being separately identified under three broad categories, namely, electricity consumption other than HVAC in individual offices, electricity consumption specifically towards HVAC in individual offices and common area electricity consumption. The Applicant proposes to recover the electricity charges attributable to individual offices based on the actual per-unit rate charged by CESC Limited, while the balance amount attributable to common area consumption is proposed to be apportioned among the unit holders on the basis of the super-built-up area of their respective units.

2.19 The Applicant submits that the proposed reimbursement mechanism therefore satisfies the essential requirement that the amount recovered from the recipients corresponds to the amount paid to the third-party electricity distribution company. The Applicant does not seek to earn any profit from the electricity charges. The amount is recovered only for reimbursement of the actual electricity expenditure incurred by the Applicant. Accordingly, the Applicant submits that such reimbursement should not be included in the taxable value of the maintenance service.

2.20 The Applicant accordingly submits that, in view of Circular No. 206/18/2023-GST dated 31.10.2023, Rule 33 of the CGST Rules, 2017, the statutory provisions governing electricity and the judicial observations relied upon by the Applicant, the Applicant should be permitted to deduct the reimbursement of electricity charges from the value of its maintenance service for the purpose of GST, subject to fulfillment of the conditions prescribed for a pure agent. The Applicant therefore prays that the Authority may be pleased to rule that the proposed mechanism of recovery of electricity charges from the

unit holders, being recovery on an actual basis without any profit element and in the capacity of a pure agent, would not attract GST as part of the value of the Applicant's maintenance service.

2.21 The Applicant craves leave to add to, amend, modify, rescind, supplement or alter any of the grounds stated hereinabove and to make such further submissions and rely upon such documents and/or pronouncements as may be deemed necessary or appropriate before or at the time of hearing of the application.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue submits that the applicability of GST on the supply of electricity by real estate companies, malls, airport operators and similar entities to their lessees or occupants has been clarified vide Circular No. 206/18/2023-GST dated 31.10.2023, corresponding to State Circular No. 19/2023 dated 17.11.2023 of WBGST. It has been submitted that where electricity is supplied by such entities as a pure agent, the same would not form part of the value of their supply. Further, where electricity charges are recovered on an actual basis, that is, the same amount is recovered from the lessees or occupants as charged by the State Electricity Boards or DISCOMs, the supplier would be deemed to be acting as a pure agent in respect of such supply.

3.2 The Revenue further submits that in the instant case, the Applicant charges electricity charges from its lessees or occupants on an actual basis, without any difference between the amount recovered from the lessees or occupants and the amount charged by the State Electricity Boards or DISCOMs. Accordingly, the electricity charges so recovered would not form part of the value of supply made by the Applicant. However, if any value is added by the Applicant in the process of recovery of electricity charges, such value would form part of the composite supply and would be taxable accordingly in terms of the relevant provisions referred to in the said Circular.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representatives of the applicant during personal hearing. We have also considered the submission made by the concerned revenue officer.

4.2 As per the facts submitted before us, the applicant is exclusively engaged in providing common area maintenance, facility management and allied services in respect

of a commercial building by the name of Diamond Heritage. It also pays electricity charges to the electricity distribution company (here Calcutta Electric Supply Corporation or CESC) and recovers the same from the occupiers of the said commercial building. It is to be noted here that CESC raises a monthly electricity bill in the name of the landowner of the said commercial building, viz. Ms Strand Properties Limited, mentioning in the bill, inter alia, the site details i.e. 'Diamond Heritage Office Building, 16 Strand Road, Kolkata- 700001', total units consumed and total amount payable. On receipt of the monthly electricity bill distributed by CESC, the applicant recovers the same from the unit holders of the building, being the occupiers of the commercial building named Diamond Heritage.

4.3 Under these circumstances, the applicant has placed the following question before this authority:

Question: Whether recovery of electricity charges by the applicant at actual cost based on consumption, as charged by the electricity distribution company without any mark up including electricity attributable to Heating Ventilation and Air conditioning (HVAC) operations and common area consumption, qualifies as reimbursement in the capacity of a pure agent and whether GST would be leviable on the same, more specifically in terms with Circular No. 206/18/2023 - GST dated 31.10.2023 issued in this regard by Ministry of Finance, Department of Revenue (TRU)?

4.4 In the course of elaboration of the activities of the applicant, it has been stated that the applicant has installed sub-meters, one for normal electricity consumption and the other for Heating, Ventilation and Air Conditioning (HVAC) operations at the respective allotted spaces of the unit holders. Based on such readings, the applicant recovers the costs of electricity from the said unit holders. The applicant also supplies electricity to the common areas and proportionate distribution charges related to the space allotted to each unit holder is recovered from them. So, the unit holders consume electricity under three heads:

- Consumption other than HVAC in the individual office for which a sub-meter has been installed in the individual office.
- Consumption specifically towards HVAC in individual office for which a sub-meter has been installed in the individual office.
- Consumption towards the common area of the office building

It is informed by the applicant that it desires to change the billing pattern for

reimbursement of electricity in the following manner:

- Reimbursement at the unit rate of electricity being charged by CESC for consumption of electricity other than HVAC.
- Reimbursement at the unit rate of electricity being charged by CESC for consumption of electricity specifically for HVAC.
- For common area consumption, the amount recoverable would be the amount payable to CESC against the total electricity consumption for a month, reduced by the amount already recovered under the above two heads. The balance amount, being common area consumption, would be divided among all unit holders based on the super-built area of their individual units.

4.5 The applicant has referred to the Circular No. 206/18/2023- GST dated 31.10.2023 issued by Ministry of Finance, Department of Revenue (Tax Research Unit). The relevant portion of the circular which has been reproduced by the applicant is as under:

> ***3. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.***
>
> ***3.1*** *Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.*
>
> ***3.2*** *It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.*
>
> ***3.3*** *However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.*

The applicant is of the view that his proposed activity delineated in Paragraph 4.4 *supra* conforms to the explanation given in Circular No. 206/18/2023- GST dated 31.10.2023 read with Rule 33 of the CGST Rules, 2017. According to the applicant,

it would be deemed to be a pure agent so far as the proposed activity is concerned.

4.6 Initially, the Revenue has given its submission in detail as under:

a) *In our considered opinion, applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc.., to their lessees or occupants has been clarified vide Circular No. 206/18/2023- GST dated 31/10/2023 (corresponding State Circular No. 19/2023 dated 17/11/2023 of WBGST).*

At the said circular in point 3.3 states "where the electricity is supplied by the real estate owners, resident welfare associations (RWAs), real estate developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as is charged by the State Electricity Boards or DISCOMs from them. They will be deemed to be acting as pure agent for this supply." In the instant case, as the applicant charges for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants, as charged on them by the State Electricity Boards or DISCOMs, and since there is no difference in the amount being so collected by the applicant from the lessees or occupants and the amount charged on the applicant by the State Electricity Boards or DISCOMs, then it will not form part of value of supply of the applicant. However, in case there is any value being added in the entire process, it would form a part of composite supply and shall be taxed accordingly, pursuant to the relevant point no. 3.2 of the said Circular

b) Later on, it has been informed by the jurisdictional authority that the issue raised in the present application has already been the subject matter of several adjudication proceedings in respect of the applicant. In adjudication cases bearing no. AD190625009367U and AD1906250170729 for the periods 2018-19 and 2019-20, the proceedings have been completed, and the issues in both cases have been the subject matter of the present application.

c) In respect of adjudication case ID AD190625009367U, we find that the adjudicating authority has discussed the matter at length. The relevant portions of the said order are reproduced as under:

After consideration of the reply, and on the basis of the discussion as held

above, the reply is not found satisfactory for the reasons of the same discussed in detail hereunder,-

1. That, in reply it has been held that, the RTP is supplying electricity as goods i.e. exempt from GST under the Goods and Services Tax (GST) regime. However, in my opinion, in the instant case, the RTP is engaged in the provisioning of electricity which is a service, and not the sale of a product Electricity is the flow of electrically charged particles along a conductor. ***The RTP does not "manufacture" electrically charged particles, „but rather", only distributes the electrically charged particles already set in motion by the utilities like CESC through the necessary elements that allow the flow of electricity. The consumer pays for electricity by kilowatt hour, that is, the length of time electricity flows through the system. There is no individual product. Instead, the consumer pays for use of the electricity****.*

……..

Also to mention here that, as replied by the RTP itself, it has been ***formed with the objective to undertake, provide, execute and carry on the maintenance, management, administration of common portions/services/ facilities and allied work of the Building/Complex known as „Diamond Heritage' situated at premises no. 16 Strand Road, Kolkata - 700 001****. So, for the services such as maintenance services or renting of immovable property which are naturally bundled with the supply of electricity,* ***GST is applicable depending on how the services are classified****. For example,* ***if electricity supply is bundled with other services (e.g., maintenance of premises or renting of immovable property), it shall qualify as a composite supply and will attract GST at 18%, even if electricity is billed separately as per the following provisions:-***

i. *In terms of Sl.13 of Notification 11/2017– Central Tax (Rate) dated 28/06/2017 and pari-materia State Notification issued in this regard,* ***"Electricity, gas, water and other distribution services" (under Heading 9969) is taxable @ 18%.****;*

ii. *In terms of Sl.25 of Notification 12/2017– Central Tax(Rate) dated 28/06/2017 and pari-materia State Notification issued in this regard,* ***"Transmission or distribution of electricity by an electricity transmission or distribution utility" (under Heading 9969) is exempt from levy of GST****;*

iii. *In terms of para 2(z) of the Sl.25 of Notification 12/2017– Central Tax(Rate) dated*

iv. *28/06/2017 and pari-materia State Notification issued in this regard —**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;"*

*The plain reading of such provision of law suggests that, for **an electricity transmission or distribution utility** like CESC Limited, subsequent **transmission or distribution of electricity by taxpayer to its licensees/tenants is exempt from GST** (like, transmission or distribution of electricity by the CESC Limited to taxpayer which is exempt from tax), but any entity (like the taxpayer) not being an electricity transmission or distribution utility is **taxable @18% in terms of Sl.13 of Notification 11/2017**– Central Tax (Rate) dated 28/06/2017 and pari-materia State Notifications issued in this regard under the SAC code 9969;*

Referring to Circular No. 206/18/2023-GST, the adjudicating authority went on to observe the following:

*Here, principal supply is maintenance and repair of immovable property of the premise(s) and the supply of electricity is an ancillary supply which is naturally bundled as the supply of electricity is used by the RTP solely to cater for the requirements of its licensees/tenants. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property of premise would be applicable. Accordingly, it could be said that the **nature of RTP"s supply** in this regard to his licensees/tenants is of a **composite supply** in terms of clause (30) of section 2 of the CGST/ WBGST Act, 2017, where the principal supply is of maintenance and repair of the specified premise, as agreed upon, and **supply of electricity is naturally bundled and supplied in conjunction** with the aforesaid principal supply on which account transmission or distribution of electricity by RTP to its licensees/tenants becomes taxable in terms of section 8 of the CGST/WBGST Act, 2017; **Hence, i**n this case, it is **immaterial as to how the RTP takes the***

> ***consideration*** *from the licensees / tenants i.e., whether by way of reimbursement received on account of expenses or by raising a separate tax invoice / bill of supply for transmission or distribution of electricity or in a single invoice along with the maintenance of the premise;*

On the basis of the above adjudication proceedings, the Revenue has opined that the very admissibility of the application should be reviewed in the light of the subject matter of the adjudication.

4.7 This bench has carefully gone through the application for advance ruling, the submissions made and records placed by the applicant in course of personal hearing and the initial and subsequent submissions made by the Revenue and the related documents of the adjudication proceedings referred to by the Revenue. The subject matter of the application and the adjudication proceeding as referred may appear to be the same at first glance. However, the questions raised in the application for advance ruling are based on the applicant's proposed billing pattern. The adjudication proceeding done by the Revenue is based on the existing billing pattern at the material point in time.

During the personal hearing, clarification was sought from the applicant's representative regarding the existing and proposed billing pattern. The details submitted before us can be summarised as under:
As per the existing billing pattern, the applicant has been issuing three bills to a particular unit holder. The first bill is charged for electricity consumption in the unit holder's office premises, other than HVAC, based on readings from the sub-meter. The applicant also charges transmission and distribution loss at 5% on the consumed units, in addition to actual consumption. The second bill is for electricity consumption in the unit holder's office premises for HVAC, based on sub-meter readings. The third bill is issued for maintenance, including electricity for common areas and common facilities.

Now, the applicant proposes to change the above existing billing pattern. The proposed composite bill will comprise four elements. First, the applicant proposes to charge at the unit rate of electricity charged by CESC for consumption other than HVAC. Second, the applicant will charge at the unit rate of electricity charged by CESC for HVAC consumption. The third element is for common area consumption; the recoverable amount would be the amount payable to CESC

against the total electricity consumption for a month, reduced by the amount already recovered under the above two heads. The balance amount, being common area consumption, would be divided among all unit holders based on the super-built area of their individual units. Finally, there will be a separate element called 'Common Area Maintenance' (in short, CAM) charge at an agreed-upon rate, applicable uniformly on a per-unit area basis.

Since the applicant has put the questions based on the proposed billing pattern, we are of the considered view that the issues in the adjudication and in the present application are different. Hence, we will continue to record our observations and pronounce a ruling on the basis of such observations.

4.8 Since the cardinal issue of the present application is related to the matter discussed in clause 3 of Circular No. 206/18/2023- GST dated 31.10.2023 issued by Ministry of Finance, Department of Revenue (Tax Research Unit), we will discuss our case threadbare in the light of the circular. The circular makes it clear that whenever electricity is supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it will form part of a composite supply and shall be taxed accordingly. The principal supply here is renting of immovable property and/or maintenance of premises, as the case may be. The supply of electricity in that case is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply.

In the present case, the applicant is a company registered with the Registrar of Companies under Section 7 of the Companies Act, 2013. Clause IIIA of the Memorandum of Association, as placed before us, has defined the main objects of the company are to take over the maintenance, management and administration of the building and to undertake, provide, execute and carry on maintenance, management, administration of common portions/ services/ facilities and other allied works of the building which *inter alia* includes electrical systems and connections. The same clause also defines that the main purpose of the company is to take necessary steps for common purposes, including the purpose of maintaining and managing premises, rendition of services in common and collection of revenue and disbursement of common expenses. There is hardly any doubt that supply of electricity is an integral part of maintenance and management services provided by the applicant. It is true that in the proposed billing pattern the applicant has separated four kinds of supply and thereby tried to alienate CAM

from electricity charges. But here we should concentrate more on the content of the issue, not the form. The applicant's activity is maintenance of premises and supply of electricity is an ancillary supply bundled with the principal supply of maintenance service. Clause 3.2 of the circular *ibid* has clearly stated, in the like cases even if electricity is billed separately, the supplies will constitute a composite supply.

4.9 The applicant has argued that clause 3.3 of Circular No. 206/18/2023- GST dated 31.10.2023 has specified the exceptions to the applicability of clause 3.2. The first sentence of this clause clearly states where electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. The second sentence of the same clause makes it further clear that where the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc. charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

In our considered view, clause 3.3 indeed specifies deviation from the explanation given in clause 3.2 by using the word 'however'. The clause elaborates that if the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers, etc., while supplying electricity as a part of composite supply, act as pure agents, the value of such supply of electricity will not form part of the value of their supply. Also, the use of the word 'etc.' has in fact widened the scope of inclusion of other entities so long as the nature of supply resembles the one specified in clause 3.3.

As per our understanding, the second sentence of the above clause is a deeming provision. According to this explanation of the circular, where the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc. charge for electricity on an actual basis, that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as a pure agent for this supply. In that case, the provisions related to Pure Agent in the GST Act will be squarely applicable.

4.10 In order to study the implications of clause 3.3 of the circular *ibid,* let us begin with the concept of 'Pure Agent'. Generally speaking, a pure agent is one who,

while making a supply to the recipient, also receives and incurs expenditure on some other supplies on behalf of the recipient upon his authorization and claims reimbursement on an actual basis, without adding it to the value of his own supply for such supplies from the recipient of the main supply. The relationship between them is that of a provider of service and a recipient of service in respect of the main service, on a principal-to-principal basis. On the other hand, their relationship in respect of other ancillary services is that of a pure agent.

Now we will look at the concept from the perspective of the GST laws.

Section 2(5) of the CGST Act, 2017 defines an 'Agent' as 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.

We find the reference to the term 'Pure Agent' in explanation to Rule 33 of the CGST Rules, 2017. The relevant rule is reproduced as under:

33. Value of supply of services in case of pure agent.

Notwithstanding anything contained in the provisions of this Chapter, 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 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 authorisation 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.*

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.*

Illustration. – Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees.

Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

4.11 Now the question is whether the applicant can be considered as a pure agent on the factual matrix. It is admitted that the applicant proposes to realise from the unit holders the exact amount that the distribution company (here CESC) will charge in respect of consumption of electricity. Since the CESC bill is not raised in the applicant's name, there is no question of the applicant holding any title to the services received from CESC. However, we do not find any contractual agreement between the applicant and the end consumers of electricity (i.e. the unit holders) to the effect that the applicant will act as their pure agent to incur expenditure or cost in the course of supply of service by the applicant. When asked on this point, the applicant's representative gives an additional submission and produces a specimen agreement in this respect, which will be made with the individual unit owner. As per the terms of the specimen agreement produced before us, the applicant is authorised to act as a pure agent of the service recipient (here, the unit owner) when he makes payment to DISCOM or any other electricity supplier for the share of electricity on behalf of the service recipient. The applicant is supposed to provide maintenance, management, administration of common portions/services/facilities, and other allied works of the building, which *inter alia* includes electrical systems and connections. Supply of electricity is undoubtedly a part of the entire service. Accordingly, the applicant is using the service of providing electricity as part of the whole set of services he is supposed to provide to the unit holders. In our considered view, the applicant fails the test of a pure agent.

4.12 Now we will consider the explanation provided in the second sentence of clause 3.3 of Circular No. 206/18/2023- GST dated 31.10.2023. This part of the circular states as under:

> *Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be* ***deemed to be acting as pure agent for this supply****.* (emphasis added)

It is to be noted that where the service providers charge for electricity on an actual basis, i.e. they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they are deemed to be a pure agent for the supply of electricity. In the present case, the applicant proposes to change his billing pattern to one where he will charge the unit holder the same amount as charged by the DISCOM for the electricity consumed by the unit holder, as per the reading of the sub-meter installed for the unit holder. This is applicable for electricity consumed in respect of HVAC and normal supply in the unit holder's own area. The remaining amount of the bill raised by the DISCOM will be divided on a *pro-rata* basis according to the area enjoyed by the unit holder in respect of common area electricity consumption in common areas. No mark-up or profit element will be charged on these amounts. Effectively, this will result in charging the same amount as charged by the DISCOM for the electricity consumed. The applicant also proposes to show the break-ups of electricity charges separately, along with the Common Area Maintenance charge, according to the *proforma* invoice placed before us. Accordingly, the explanation provided in the second sentence of clause 3.3 ibid is squarely applicable to the applicant.

In our considered view, recovery of electricity charges by the applicant at actual cost based on consumption, as charged by the electricity distribution company without any mark-up including electricity attributable to Heating Ventilation and Air conditioning (HVAC) operations and common area consumption can be deemed to be considered as recovery in the capacity of a pure agent in terms of the provisions of the

CGST Act, 2017 read with the relevant portions of Circular No. 206/18/2023- GST dated 31.10.2023 issued by Ministry of Finance, Department of Revenue (Tax Research Unit). Accordingly, the same value will be excluded from the total value of supply made by the applicant and no GST is levied on this excluded part.

In view of the foregoing, we rule as under:

RULING

Question: Whether recovery of electricity charges by the applicant at actual cost based on consumption, as charged by the electricity distribution company without any mark up including electricity attributable to Heating Ventilation and Air conditioning (HVAC) operations and common area consumption, qualifies as reimbursement in the capacity of a pure agent and whether GST would be leviable on the same, more specifically in terms with Circular No. 206/18/2023 - GST dated 31.10.2023 issued in this regard by Ministry of Finance, Department of Revenue (TRU)?

Answer: Recovery of electricity charges by the applicant at actual cost based on consumption, as charged by the electricity distribution company without any mark-up including electricity attributable to Heating Ventilation and Air conditioning (HVAC) operations and common area consumption as explained in the application can be deemed to be considered as recovery in the capacity of a pure agent in terms of the provisions of the CGST Act, 2017 read with the relevant portions of Circular No. 206/18/2023- GST Dated 31.10.2023.
GST will not be levied on the same.

Sd/-
(YOGESH SUGDEO CHITTE)
Member
West Bengal Authority for
Advance Ruling

Sd/-
(JAYDIP KUMAR CHAKRABARTI)
Member
West Bengal Authority for
Advance Ruling

Place: Kolkata
Date: 1st September, 2026

To,

DH Maintenance Limited
16, Strand Road, Strand Road,
Kolkata, West Bengal, 700001

Copy to,

(1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata - 700107

(2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata - 700015

(3) The Commissioner, CGST & CX, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata - 700107

(4) The Charge Officer, Commercial Taxes, Strand Road Charge, 14, Beliaghata Road, Kolkata - 700015

(5) Office copy