

2024 (85) G.S.T.L. 125 (A.A.R. - GST - Guj.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, GUJARAT

S/Shri Amit Kumar Mishra, Member (Central Tax) and Riddhesh Raval, Member (State Tax)

IN RE : TASTY THRILLS LLP

Advance Ruling No. GUJ/GAAR/R/2023/33, dated 3-11-2023 in Application No. Advance Ruling SGST&CGST/2023/AR/10

Advance Ruling application - Maintainability of - Applicant operating a restaurant had taken a premises on sub-lease basis from Hard Castle Restaurants Pvt. Ltd - Premises housed both restaurants but had a common electricity connection - Applicant sought advance ruling on question whether when sub-lessor charges electricity based on sub-meter reading in addition to rent as per sub-lease agreement for immovable property rented to tenant, whether sub-lessor was liable to charge and pay GST on electricity charged by it - *HELD* : Applicant was not supplier of service and ruling sought was not for admissibility of input tax credit in respect of supply received by applicant, who is seeking to ascertain liability of his supplier, i.e., sub-lessor - Hence applicant had no locus standi in seeking advance ruling - Section 97 read with Sections 95, 98 and 103 of Central Goods and Services Tax Act, 2017 - Section 97 read with Sections 95, 98 and 103 of Gujarat Goods and Services Tax Act 2017. *[paras 11 To 15]*

Application rejected

REPRESENTED BY : Shri Tushar Jain, for the Assessee.

[Order]. - Brief facts : Tasty Thrills LLP, Shop No. 5, Axiom 2, Ground floor, Nr. Iscon Platinum, Sardar Patel Ring Road, Bhopal, Ahmedabad, Gujarat - 380 058 [for short 'applicant'] is registered with the department and its GST No. is 24AAQFT4593F2ZQ.

2. The applicant is operating a restaurant under "RP Pizzeria" brand at the aforementioned premises.

3. The appellant has taken a premises on sub-lease basis from Hardcastle Restaurants Pvt. Ltd. The sub-lessor, is in the business of operating Quick Service Restaurant under the brand name "McDonald's". The appellant on the other hand as is already mentioned supra, is operating a restaurant under 'RP's Pizzeria" brand. The premises housing both these restaurants though visibly separate, have common electricity connection.

4. The applicant, from the beginning of their rent agreement has reimbursed his portion of electricity charges, based on sub-metre reading to the sub-lessor. The sub-lessor thereafter, pays the amount so collected from the applicant along with his share of the electricity charges, to the supplier of the electricity.

5. Now, the sub-lessor is of the view that the electricity charges so collected are incidental charges to the rent & hence is liable for GST like other incidental charges. The applicant however, is of the view that its portion of the charges paid to the sub-lessor in respect of electricity consumption is nothing but a reimbursement of expenses on actual basis; that the same has been deposited by the sub-lessor to the electricity supplier; that the sub-lessor has acted as a 'pure

agent'. The applicant has further stated that no incidental services were provided to them by the sub-lessor.

6. In view of the foregoing, *vide* the aforesaid application, the applicant has sought advance ruling on the below mentioned question viz. :

(1) When sub-lessor charges electricity in additional to rent as per sub-lease agreement for immovable property rented to the tenant based on reading sub-meter is sub-lessor liable to charge and pay GST on electricity charged by it?

(2) Can electricity charges paid by sub-lessor to the supplier of electricity for electricity connection in the name of the landlord and recovered based on sub-meters from different tenant be considered as amount recovered based on sub-meters from different tenant be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to supplier of electricity is that of landlord?

(3) Can the advance ruling be effective from beginning of the rent agreement date?

6. Personal hearing was granted on 29-8-2023 wherein Shri Tushar Jain, appeared and reiterated the facts as stated in the application.

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. Before delving on to the aforementioned question, it would be prudent to reproduce the relevant provisions in vogue for the sake of ease of reference viz.

'Section 95. Definitions of Advance Ruling. -

In this Chapter, unless the context otherwise requires. -

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority ¹[or the National Appellate Authority/to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 ²[or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(e) "applicant" means any person registered or desirous of obtaining registration under this Act;

Section 97. Application for advance ruling. - (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and

accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act. shall be in respect of -

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (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;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

Section 98. Procedure on receipt of application. - (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records :

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application :

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act :

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant :

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

Section 103. Applicability of advance ruling. - (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only -

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

11. As is evident, the applicant is seeking a ruling primarily on (a) whether his sub-lessor is liable to charges recovered from the appellant towards his share; (b) can electricity charges paid by sub-lessor be considered as amount recovered as pure agent; and (c) whether the advance ruling will be effective from beginning of the rent agreement date.

12. We find that the applicant in the present proceeding is neither a supplier of the goods/service nor is the ruling sought on Input Tax Credit in respect of the supply received by the applicant, who as is mentioned supra is seeking to ascertain the liability of his supplier *i.e.* sub-lessor in the present case.

13. A conjoint reading of the Sections 95(a) and (c), 97 and 103 of the CGST Act, 2017, depicts that advance ruling means a decision by the AAR to an applicant on matters or on questions specified under Section 97(2) *ibid* in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; that an applicant, means any person registered or desirous of obtaining registration under this Act; that such an applicant, may make an application in the prescribed form with appropriate fee, stating the question on which the said ruling is sought. The questions on which the ruling is sought is however, restricted to the 7 [seven] issues listed in Section 97(2), *ibid*, further, in terms of Section 103, such a ruling shall be binding only on the applicant and on the concerned officer or the jurisdictional officer, in respect of the applicant.

14. We find that (a) the applicant before us is not the supplier of the service and (b) that the ruling sought is not for admissibility of input tax credit in respect of supply received by the applicant. This being the factual matrix, we find that the applicant before us has no *locus standi* in seeking a ruling in the facts of the present case.

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

RULING

16. The aforementioned application stands rejected in terms of Section 98(2) of the CGST Act, 2017 read with Sections 95(a), (c), and 103 of the CGST Act, 2017.