	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	KERALA GST <small>State Goods & Services Tax</small>
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &
: Shri Abraham Renn S, IRS

Legal Name of the applicant	M/s. Kerala State Electricity Board Ltd
GSTIN	32AAECK2277NBZ1
ARN	AD3208210086766
Address	Vydyuthi Bhavanam, 5 th Floor, Pattom Palace P.O., Pattom, Thiruvananthapuram - 695004.
Advance Ruling sought for	<p>1) Whether Pure Services or composite supply services with a material value less than 25% of the total value provided by the contractors to KSEBL (being a Government Entity) are exempt from GST [Notification No. 12/2017-Central Tax (Rate) – Sl. No. 3, 3A]?</p> <p>2) If the answer to the above is Yes, whether the taxes already collected by the contractor from KSEBL and remitted to the department can be refunded to KSEBL?</p> <p>3) Whether KSEBL can avail direct input tax credit on Deposit works in the following cases;</p> <p>a) KSEBL is collecting GST on Work Deposits from the consumers and remits the same. The subject work is</p>



	<p>wholly outsourced by KSEBL to a third-party contractor and GST is paid to the contractor. Whether KSEBL can avail of Input Tax Credit on GST paid to the contractor?</p> <p>b) KSEBL is collecting GST on Work Deposits from the consumers and remits the same. KSEBL purchases the specific material separately and uses it in the work. Only labour is outsourced. GST is paid on material purchased and to the labour contractor. Whether KSEBL can avail of Input Tax Credit on GST paid on materials and labour contract?</p> <p>c) KSEBL is collecting GST on Work Deposits from the consumers and remits the same. KSEBL has utilized the materials from the pool of materials in stock which is centrally procured earlier paying GST. Only labour is outsourced. GST is paid on materials at the time of purchase and to the labour contractor. Whether KSEBL can avail of Input Tax Credit on GST paid on materials and on labour contracts?</p> <p>4) If direct credit cannot be availed by KSEBL, whether proportionate credit can be availed by KSEBL for the quantum of taxable Services provided</p>
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	<p>based on the data available in GSTR 2A of KSEBL.</p> <p>5) Whether Reverse Charge is applicable on Rent a Cab from Unregistered Suppliers and if not applicable, how KSEBL can get the refund of GST (RCM) paid on the services received from unregistered rent a cab service provider?</p> <p>6) Whether the practice of raising GST Invoice for Deposit works, after the completion of service and settlement of dues is in the line with the legal interpretations of the Law.</p>
Date of Personal Hearing	20.07.2022
Authorized Representative	Shri E. N. Satheesan, Assistant Finance Officer, KSEBL and two others

ADVANCE RULING No. KER/07/2023 Dated 03.04.2023

1. The Kerala State Electricity Board Limited (hereinafter referred to as the applicant) is carrying out the business of generation, transmission, and distribution of electricity in the State of Kerala.
2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.



3. The applicant requested an advance ruling on the following:

- 3.1.** Whether Pure Services or composite supply services with a material value less than 25% of the total value provided by the contractors to KSEBL (being a Government Entity) are exempt from GST [Notification No. 12/2017-Central Tax (Rate) – Sl. No 3,3A]?
- 3.2.** If the answer to the above is Yes, whether the taxes already collected by the contractor from KSEBL and remitted to the department can be refunded to KSEBL?
- 3.3.** Whether KSEBL can avail direct input tax credit on Deposit works in the following cases;
- a) KSEBL is collecting GST on Work Deposits from the consumers and remits the same. The subject work is wholly outsourced by KSEBL to a third-party contractor and GST is paid to the contractor. Whether KSEBL can avail of Input Tax Credit on GST paid to the contractor?
 - b) KSEBL is collecting GST on Work Deposits from the consumers and remits the same. KSEBL purchases the specific material separately and uses it in the work. Only labour is outsourced. GST is paid on material purchased and to the labour contractor. Whether KSEBL can avail of Input Tax Credit on GST paid on materials and on labour contract?
 - c) KSEBL is collecting GST on Work Deposits from the consumers and remits the same. KSEBL has utilized the materials from the pool of materials in stock which is centrally procured earlier paying GST. Only labour is outsourced. GST is paid on materials at the time of purchase and to the labour contractor. Whether KSEBL can avail Input Tax Credit on GST paid on materials and on labour contract?
- 3.4.** If direct credit cannot be availed by KSEBL, whether proportionate credit can be availed by KSEBL for the quantum of taxable services provided based on the data available in GSTR 2A of KSEBL.



- 3.5.** Whether Reverse Charge is applicable on Rent a Cab from Unregistered Suppliers and if not applicable, how KSEBL can get the refund of GST (RCM) paid on the services received from unregistered rent a cab service provider?
- 3.6.** Whether the practice of raising GST Invoice for Deposit works, after the completion of service and settlement of dues is in the line with the legal interpretations of the Law.

4. Contentions of the applicant:

- 4.1.** Regarding pure services received by the applicant, they submit that as per Sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 as amended by Notification No. 32/2017-CT (Rate) dated 13.10.2017 pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution, is exempt. As per Sl. No. 3A of Notification No. 12/2017-CT (Rate) dated 28.06.2017 inserted by Notification No. 02/2018-CT (Rate) dated 25.01.2018; Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243 W of the Constitution, is exempt.
- 4.2.** The various clauses under Article 243G/W of the Constitution related to the activities of the applicant are:



1. *Clause 5 of Article 243W: Water supply for domestic, industrial, and commercial purposes.*
 2. *Clause 17 of Article 243W: Public amenities including street lighting, parking lots, bus stops and public conveniences.*
 3. *Clause 14 of Article 243G: Rural electrification, including distribution of electricity.*
 4. *Clause 15 of Article 243G: non-conventional energy sources.*
- 4.3.** The applicant is receiving many services from contractors / others which are in the nature of pure-services/in the nature of composite service where value of supply of goods constitutes not more than 25% of the value of the said composite supply. At present, many contractors who are registered under GST providing pure services to the applicant in relation to the distribution of electricity are collecting GST from them, even if the services they provide are falling in the above category of services.
- 4.4.** Regarding input tax credit on Deposit Works undertaken by them, they submit that as per Section 16(1) of CGST Act 2017; *every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. As per Section 17(2) of the CGST Act 2017; where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*
- 4.5.** The applicant in addition to the routine activity of transmission and distribution of power, also undertake to do those works in relation to transmission and distribution of electricity as per the request of the



consumers. Such works are commonly termed Deposit Works as the work is undertaken after accepting the cost of work as a deposit from the consumer. In such situations, they prepare an estimate and collect the amount from the beneficiary on whose request the work is processed. They have furnished the Sample Estimate of Deposit work when only labour is outsourced as follows: -

	Description	Amount	Remarks
A	Material Cost	10000	Directly purchased by KSEBL
A (1)	GST incurred on Material Purchase	1800	
B	Storage, overhead and contingency (16% on A + GST)	1888	
C	Labour charges	5000	Labour contract awarded by KSEBL (pure services)
C (1)	GST incurred on Labour	900	
D	Supervision charges (10% on C + GST)	590	
E	Miscellaneous	2000	
	Total Deposit Amount	22178	
F	GST (to be remitted to department (18% on total deposit amount))	3992	
G	Total amount	26170	

4.6. The applicant submits that at present, they are not availing of input tax credit on these transactions and hence there is cascading effect of tax as represented by the above table due to the non-availment of input tax credit of A(I) and C(I) above.



- 4.7. The applicant had also submitted the Sample Estimate of Deposit Work when the whole work is outsourced as follows: -

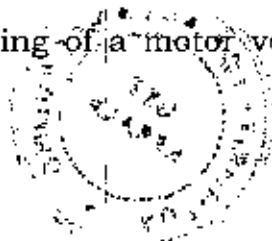
	Description	Amount	Remarks
A	Total cost of work	15000	Works contract wholly awarded to contractor
A (1)	GST on the above to be paid to the contractor	2700	
B	Supervision charges (10% on A + A (1))	1770	
C	Miscellaneous	2000	
	Total	21470	
F	GST (to be remitted to department, (18% on total))	3864	
G	Total amount	25334	

There is cascading effect of tax as represented by the above table due to the non-availment of Input Tax Credit of A (1) above.

- 4.8. Regarding the GST liability under reverse charge on the Rent a Cab Services received, the applicant submits that Para (B) 16 of the Press Release dated 20.09.2019 informing the decisions of the 37th GST Council Meeting reads as follows;

"To allow RCM to suppliers paying GST at the rate of 5% on renting of vehicles, from a registered person other than a body corporate (LLP, Proprietorship) when services provided to body corporate entities".

As per Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019, a Body Corporate is liable to remit GST on Reverse Charge basis for services provided by way of renting of a motor vehicle provided to a body corporate by any

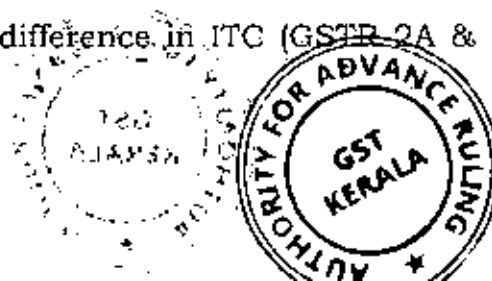


person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business. The applicant is availing Rent-a-Cab Services from many persons, where most of the service providers are unregistered and not paying GST at the rate of 5%. Presently they are remitting GST on the Reverse Charge mechanism for all the payments made on account of Rent-a-Cab Services, irrespective of whether the service provider is registered or not.

4.9. Regarding the time of supply of Deposit Works, the applicant submits that in the case of Deposit Works involving huge gestation period, the time span of works is on the higher side and it is not possible to raise the invoice at the time of collection of deposit as the status/completion of the work cannot be determined precisely in advance considering the divergent nature of the work. Further, there is every chance of deviation from the original estimate which has to be settled after the completion of the work. Hence, in such cases, invoices are created after the completion of the work. Once, the work is completed and the deposit shapes into the form of consideration, the GST invoice is raised at the time of final settlement.

5. Remarks of the Jurisdictional officer:

The application was forwarded to the jurisdictional officer as per provisions of subsection (1) of Section 98 of the CGST/SGST Act. The jurisdictional officer reported that they had issued Form ASMT 10 dated 06.01.2020 to the applicant showing the discrepancies noticed by the Accountant General (E & RSA) in Para 2.4.10.4 - Irregular carry forward of Transitional Credit of Rs.5,83,842/- without adhering to the conditions stipulated in provisions for the year 2017-18. The applicant filed reply on 31.01.2020 that the ineligible portion of credit availed by them on closing stock of LED Bulb amounting to Rs.5,83,842/- under CGST was reversed in their GSTR 3B return for the month of April, 2019. Further, Notice Reference No. ZJ3201210068151 dated 25.01.2021 was issued to the applicant with respect to difference in OPT (GSTR 3B & GSTR 1) and difference in ITC (GSTR 2A & GSTR 3B) for the



period April 2019 to March 2020. The applicant has filed reply by letter dated 04.02.2021.

6. Personal Hearing:

The applicant was granted the opportunity for personal hearing on 20.07.2022 by virtual mode. Shri. E.N. Satheesan, Assistant Finance Officer, Ranjith and Bobby George, Divisional Accounts Officers attended the personal hearing on behalf of the applicant. The officers reiterated the contentions made in the application.

7. Discussion and findings:

7.1. The matter was examined in detail. Kerala State Electricity Board Ltd is established by the Government of Kerala to carry out the business of generation, transmission and distribution of electricity in the State of Kerala and is a "State Transmission Utility" within the meaning of Section 2 (67) of the Electricity Act, 2003. It is seen that this authority in Advance Ruling No. KER/64/2019 dated 12.10.2019 in the application of M/s R S Development and Constructions India Private Ltd has already held that Kerala State Electricity Board Ltd is a government entity as defined in Para 2 (zfa) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

7.2. The applicant has raised various questions in the application. Before proceeding to answer the questions raised by the applicant it is necessary to examine the scope of the powers of the Advance Ruling Authority in answering the questions raised before it and the admissibility of the questions raised before the Authority. Section 95(a) of CGST Act defines 'advance ruling' as follows: -

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority 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 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.

7.3. From the above definition it is evident that an applicant can seek an advance ruling in relation to supply of goods or services or both undertaken or proposed to be undertaken by them. Further, as per Section 103(1) of the CGST Act such an Advance Ruling is binding only on the applicant and on the officer concerned or the jurisdictional officer in respect of the applicant.

7.4. Section 97 of the CGST / SGST Act specifies the subjects on which an application for advance ruling can be made. Section 97 of the CGST/SGST Act reads as follows: -

(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.*

7.5. Section 103 of the CGST Act governs the applicability of Advance ruling wherein it is specified that;



(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

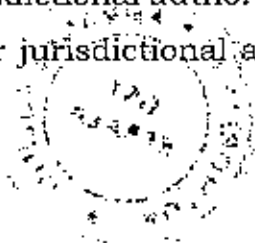
(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

7.6. On a combined reading of the definition of the terms, advance ruling, applicant and the above provisions governing advance ruling under the CGST Act it is evident that an applicant can make an application for advance ruling if the following conditions are satisfied; (1) the applicant is either registered under GST law or is desirous of obtaining registration; (2) the matter or question pertains to any issue specified in Section 97 (2); (3) such a transaction is being undertaken or proposed to be undertaken by the applicant and the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant.

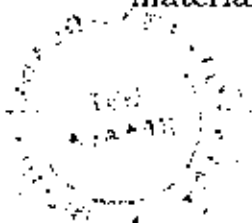
7.7. On perusal of the first and second questions raised by the applicant it is seen that the applicant has sought the taxability of the services provided by the contractors to the applicant and hence the applicant is the recipient of the services. Therefore, the questions do not pertain to a transaction that is being undertaken or proposed to be undertaken by the applicant and hence do not fall within the purview of the definition of advance ruling. Further, it is categorically stated in Section 103 of the CGST Act that the ruling pronounced is binding only on the applicant and the jurisdictional authority of the applicant. Hence, if a recipient obtains a ruling on the taxability of his inward supply of goods or services or both the supplier of such goods or services and their jurisdictional authority is not bound by that ruling and the supplier and their jurisdictional authority is free to assess the supply according to



their own determination and the ruling has no relevance or applicability. Therefore, the above questions are not admissible.

7.8. The 3rd and 4th questions are regarding the eligibility of input tax credit on the tax paid on the supplies received by the applicant and are covered under clause (d) of sub-section (2) of Section 97 of the CGST Act and hence admissible. The Jurisdictional Officer of the applicant in his remarks has stated that a Notice Reference No. ZJ3201210068151 dated 25.01.2021 has been issued to the applicant with respect to the difference in OPT (GSTR 3B & GSTR 1) and the difference in ITC (GSTR 2A & GSTR 3B) for the period April 2019 to March 2020. The issue in the notice is not with respect to the eligibility of input tax credit as such but regarding the difference in the ITC claimed in GSTR3B and the ITC available in GSTR2A for the period. Hence, it can be considered that there are no pending proceedings within the meaning of first proviso to sub-section (2) of Section 98 of the CGST Act regarding this question raised in the application. Therefore, the question is admissible.

7.9. In the 3rd question the applicant has listed out 3 different scenarios under which the applicant is providing services namely; "Deposit Works" to their consumers on which they are discharging GST liability and has sought clarification as to whether they can avail direct input tax credit of the GST paid by them on the supply of goods and / or services received by them from their contractors for supplying the services to their consumers. The first scenario is where the subject work is wholly outsourced by the applicant to a third-party contractor and GST is paid to the contractor. The second scenario is where the applicant purchases the specific material separately and uses it in the work and labour alone is outsourced and the GST is paid on material purchased and to the labour contractor. The 3rd scenario is where the applicant utilizes the materials from the pool of materials in stock which is centrally procured earlier paying GST and labour alone is outsourced and GST is paid on materials at the time of purchase and to the labour contractor.



7.10. Sections 16 to 18 of the CGST Act, 2017 enumerates the circumstances in which ITC is allowed and the conditions, limitations and the procedures subject to which the ITC can be availed.

7.11. Section 16 of the CGST Act, 2017 which prescribes the eligibility and conditions for availing input tax credit reads as follows;

“SECTION 16. Eligibility and conditions for taking input tax credit. —

- (1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
- (2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —*
 - (a) *he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;*
 - (aa) *the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;*
 - (b) *he has received the goods or services or both.*

Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

- (i) *where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during the movement of goods, either by way of transfer of documents of title to goods or otherwise;*



- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.
- (ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;
- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under Section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- (3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-Tax Act, 1961, the input tax credit on the said tax component shall not be allowed.
- (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial



year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

7.12. Section 17 of CGST Act pertains to apportionment of credit and blocked credits. Sub-section (1) of Section 17 provides *that where the goods or services or both are utilized by the registered person partially for the purpose of any business and partially for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.* Likewise, sub-section (2) of Section 17 provides that *where the goods or services or both are used by the registered person partially for affecting taxable supplies including zero-rated supplies and partially for exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.* Sub-section (3) provides that the value of exempt supply shall be such as may be prescribed in cases covered by sub – section (2). Sub-section (4) of Section 17 provides for special provision for availment of ITC by banking companies. Sub-section (5) of Section 17 provides the negative list of goods and services in respect of which input tax credit is not available and sub-section (6) confers power on the Government to prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

7.13. Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 provides the manner of determination of input tax credit in respect of inputs and input services and in respect of capital goods respectively and its reversal thereof in cases where the provisions of sub – section (1) or sub-section (2) of Section 17 are attracted. These rules provide a formula restricting the input tax credit in respect of inputs, input services and capital goods which attract sub-section (1) and sub-section (2) of Section 17 being partially used for making taxable supplies and partially for making exempt supplies.



- 7.14.** It is seen that in all the 3 scenarios as listed in the 3rd question the outward supply of service by the applicant is subjected to applicable GST and hence the applicant is eligible for availing credit of tax paid on the inward supply of inputs, input services and capital goods used or intended to be used for the purpose of the outward supply of services, namely; Deposit Works, subject to the conditions and restrictions prescribed in Sections 16 and 17 of the CGST Act, 2017 read with Rules 42 and 43 of the CGST Rules, 2017.
- 7.15.** In view of the above discussion and conclusion in respect of the 3rd question, the 4th question has lost relevance.
- 7.16.** The 5th question raised by the applicant is regarding the liability of the applicant to pay GST under reverse charge on the rent a cab service received by them. Since the question raised by the applicant is regarding the applicability of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 that notifies the categories of supply of services on which the tax is payable on reverse charge basis by the recipient of such service in respect of the services received by them the same is covered under clause (b) of sub-section (2) of Section 97 of the CGST Act, 2017 and is admissible.
- 7.17.** Sl. No. 15 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 as inserted by Notification No. 22/2019 Central Tax (Rate) dated 30.09.2019 and amended by Notification No. 29/2019 Central Tax (Rate) dated 31.12.2019 reads as follows: -

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
15	<i>Services provided by way of renting of any motor vehicle designed to carry passengers</i>	<i>Any person, other than a body corporate who supplies the</i>	<i>Anybody corporate located in the taxable</i>



	<p>where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.</p>	<p>service to a body corporate and does not issue an invoice charging central tax at the rate of 6 percent to the service recipient</p>	<p>territory</p>
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Explanation. - For the purpose of this notification, - (b) "Body Corporate" has the same meaning as assigned to it in clause (11) of Section 2 of the Companies Act, 2013.

As per clause (11) of Section 2 of the Companies Act, 2013; Body corporate or Corporation includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

7.18. It is an admitted fact that the applicant is a body corporate as defined in clause (11) of Section 2 of the Companies Act, 2013. Since the Notification No. 13/2017 CT (Rate) dated 28.06.2017 as amended is issued under sub-section (3) of Section 9 of the CGST Act, 2017 the applicant is liable to pay GST as the recipient of services in respect of the services of renting of any motor vehicle designed to carry passengers received from any person other than a body corporate not issuing invoice charging central tax at the rate of 2.5% / 6% as the case may be during the respective periods irrespective of the status of registration of the supplier.



- 7.19. The 6th question raised by the applicant is regarding the time of supply of the services, namely; Deposit Works supplied by the applicant. The question is covered under clause (c) of sub-section (2) of Section 97 of the CGST Act and hence admissible.
- 7.20. The submission of the applicant is that in the case of Deposit Works involving huge gestation period, the time span of works is on the higher side and it is not possible to raise the invoice at the time of collection of deposit as the status/completion of the work cannot be determined precisely in advance considering the divergent nature of the work and also there is every chance of deviation from the original estimate which has to be settled after the completion of the work. The provisions governing the time of supply of services and tax invoice are contained in Sections 13 and 31 of the CGST Act. The relevant provisions of Sections 13 and 31 of the CGST Act, 2017 are reproduced below;

"SECTION 13. Time of supply of services. — (1) *The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

(2) *The time of supply of services shall be the earliest of the following dates, namely: —*

(a) *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

(b) *the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

(c) *the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply;*

Provided *that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at*



the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. — For the purposes of clauses (a) and (b) —

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier."

"SECTION 31. Tax invoice. -

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, -

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which -

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(ii) tax invoice may not be issued.

(3) Notwithstanding anything contained in sub-sections (1) and (2) —

(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the



period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and, in such manner, as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.



- 7.21.** The period within which a registered person supplying taxable services shall issue a tax invoice in terms of sub-section (2) of Section 31 of the CGST Act, 2017 is prescribed in Rule 47 of the CGST Rules, 2017; which reads as follows;

“Rule 47. Time limit for issuing tax invoice. - The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty-five days from the date of the supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.”

- 7.22.** Therefore, in terms of provisions of sub-section (2) of Section 31 of the CGST Act, 2017 read with Rule 47 of the CGST Rules, 2017 the applicant shall issue tax invoice in respect of the supply of services namely; “Deposit Works” within 30 days from the date of supply of the service. However, as the applicant is collecting the consideration as per the estimate prepared in advance from the consumers, in view of the provisions contained in clause (a) of sub-section (2) and clause (i) of explanation to sub-section (2) of Section 13, the supply is deemed to have been made to the extent covered by the payment received and hence the time of supply of services to the extent of the payment received shall be the month in which the payment is received.



Therefore, the applicant shall issue a Receipt Voucher for the payment received in terms of clause (d) of sub-section (3) of Section 31 of the CGST Act read with Rule 50 of the CGST Rules and pay the applicable tax in respect of the same through the returns in Form GSTR-3B furnished for the month in terms of Section 39 of the CGST Act read with Rule 61 of the CGST Rules and also report the details of the payment of tax in Table 11 of the return in Form GSTR-1 furnished for the month in terms of Section 37 of the CGST Act read with Rule 59 of the CGST Rules for adjustment of the tax paid on the advance at the time of issue of tax invoice.

In view of the above-stated observations, following rulings are issued.

RULING

Question 1: Whether Pure Services or composite supply services with material value less than 25% of total value provided by the contractors to KSEBL (being a Government Entity) are exempt from GST (Notification No. 12/2017-Central Tax (Rate) – Sl. No. 3, 3A)?

Ruling: No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Question 2: If the answer to the above is 'yes', whether the taxes already collected by the contractor from KSEBL and remitted to the department can be refunded to KSEBL?

Ruling: Not relevant in view of the answer to Question No 1 above.

Question 3: Whether KSEBL can avail direct input tax credit on Deposit works in the following cases;

- a. KSEBL collects GST on Work Deposits from the consumers and remits the same. The subject work is wholly outsourced by KSEBL to a third-party contractor and GST is paid to the contractor. Whether KSEBL can avail Input Tax Credit on GST paid to the contractor?



- b. KSEBL collects GST on Work Deposits from the consumers and remits the same. KSEBL purchases the specific material separately and uses it in the work. Only labour is outsourced. GST is paid on material purchased and to the labour contractor. Whether KSEBL can avail Input Tax Credit on GST paid on materials and on labour contract?
- c. KSEBL collects GST on Work Deposits from the consumers and remits the same. KSEBL has utilized the materials from the pool of materials in stock which is centrally procured earlier paying GST. Only labour is outsourced. GST is paid on materials at the time of purchase and to the labour contractor. Whether KSEBL can avail Input Tax Credit on GST paid on materials and on labour contract?

Ruling: For a, b, and c, the applicant is eligible for availing credit of tax paid on the inward supply of inputs, input services and capital goods used or intended to be used for the purpose of the outward supply of services, namely, Deposit Works, subject to the conditions and restrictions prescribed in Sections 16 and 17 of the CGST Act, 2017 read with Rules 42 and 43 of the CGST Rules, 2017.

Question 4: If direct credit cannot be availed by KSEBL, whether proportionate credit can be availed by KSEBL for the quantum of taxable services provided based on the data available in GSTR2A of KSEBL?

Ruling: Not relevant in view of the answer to Question No. 3 above.

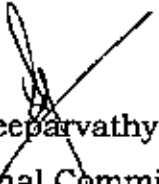
Question 5: Whether Reverse Charge is applicable on Rent a Cab from Unregistered Suppliers and if not applicable, how KSEBL can get the refund of GST (RCM) paid on the services received from unregistered rent a cab service provider?


Ruling: The applicant is liable to pay GST as the recipient of services in respect of the services of renting of any motor vehicle designed to carry passengers received from any person other than a body corporate, irrespective of the status of registration of the supplier as per entry at Sl. No. 15 of Notification No. 13/2017 CT (Rate) dated 28.06.2017 as amended.



Question 6: Whether the practice of raising GST Invoice for Deposit works, after the completion of service and settlement of dues is in the line with the legal interpretations of the Law?

Ruling: As per provisions of sub-section (2) of Section 31 of the CGST Act, 2017 read with Rule 47 of the CGST Rules, 2017 the applicant shall issue tax invoice in respect of the supply of services namely; "Deposit Works" within 30 days from the date of supply of the service. The applicable GST in respect of the payments received in advance shall be discharged as mentioned in Para 7.22 above.


S.L. Sreeparvathy
Additional Commissioner of Central Tax
Member


Abraham Renn S
Additional Commissioner of State Tax
Member

To,

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- 2) The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
- 3) The State Tax Officer, Tax Payer Services Circle, Pattom, Thiruvananthapuram.

