

Case Study Series – GST Advance Ruling

Crux of the case:

The manpower supply agency discharges the EPF, ESI liability of employees on behalf of the factory and the factory reimburses the same to the manpower agency. Whether GST is applicable on such reimbursement?

Authority	Uttar Pradesh authority for advance ruling
Legal Name of Applicant	M/s. Lucknow producers Cooperative Milk Union Ltd.
Details of Application	UP ADRG 76/2021 dt. 16/4/2021

Facts of the case:

- The applicant is engaged in the business of manufacture of milk and milk products.
- The applicant is availing the services of various manpower supply agencies (service providers).
- As per the agreement, the service providers raise two bills, one for charges for the service and the other for reimbursement of discharge of statutory liabilities.

Applicant's view:

- The applicant is of the view that bills raised for reimbursement of EPF and ESI are not subject to GST.
- The applicants base their view on Rule 33 of the GST Valuation Rules which says that the expenditure or cost incurred by supplier as a pure agent of the recipient of supply shall be excluded from the value of supply.

Department's View:

- The gross value which includes EPF, ESI contribution, service charge and actual reimbursement to the person/labour (manpower) is liable to GST and shall be charged by the manpower recruitment agency.

Discussion and Findings:

- As per the work order issued to the manpower recruitment agency, the applicant is liable to pay wages and service charges to the contractor and reimburse the EPF, ESI, Service tax, bonus after payment by the contractor.
- As per section 2(31) of CGST Act, 2017 the entire payment received by the contractor from the applicant will be considered as consideration and GST would be payable on the entire amount which includes the amount of reimbursement as well.
- Section 15(1) of the CGST Act, 2017 clearly stipulates that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services where the supplier and the recipient are not related and the price is the sole consideration for the supply.

- Further section 15(2) and 15(3) specifically elaborates the items that are to be included and excluded from the value of supply respectively.
- As per section 15, there is intent to include even all taxes, duties, cesses, fees and all charges in the value of supply and ***there can be no exception for ESI and EPF amount.***
- The applicants base their view on Rule 33 of the CGST Rules, 2017 (services provided by pure agent). However the condition contained in Rule 33(iii) provides that “The supplies procured by the pure agent from the third party as pure agent of the recipient of the supply are in addition to the services he supplies on his own account”. In the instant case, labour contractor cannot be treated as pure agent as the contractor is not procuring any additional services from the third party and instead of this the contractor is providing the single service of manpower supply and the contractor is charging for the said supply only.
- Further, there is no contractual agreement with the recipient of supply to act his pure agent to incur expenditure in the course of supply of services.

Order:

Question asked by the applicant: GST liability on reimbursement of employee’s provident fund and ESI?

Order from AAR: GST is liable to be paid @ 18% (9% CGST and 9% SGST) on the reimbursement of EPF and ESI contribution.

Key Take away from the above decision:

GST is applicable and is to be charged by the manpower recruitment agency when it receives reimbursement of EPF and ESI discharged by it on behalf of the third party.

There should exist a clear agreement that the manpower recruitment agency acts as a pure agent of the third party while making EPF and ESI payments if the third party wishes to take advantage of Rule 33 and circumvent charging GST on the reimbursement transaction.