

**GIB/TN/M/S ICU MEDICAL/10.03.2021/AAAR-48**

**Appellate Advance Ruling Category :** RATE OF GST

**State :** Tamil Nadu

**Order No.:** GIB/TN/M/S ICU MEDICAL/10.03.2021/AAAR-48

**Name of Entry :**  
M/S ICU MEDICAL LLP

**Date :** 10-03-2021

**Breif Issue :**

**FACTS OF THE CASE:**

In the above case the Appellant is engaged in the business of Software development for the Infusion system having its place of business located at USA During the course of supplying such software development services, the appellant company incurs expenses, which represents cost of the services and with a margin, consideration is received from the overseas holding company. The Appellant has filed the present appeal. The grounds of appeal are as follows:

The payment made by the appellant to ICU Inc. is not a supply and it is transaction in money;

1. Reimbursement of payment made towards expenses for credit card does not constitute supply from ultimate holding company to its subsidiary company as defined under Section 7 of the CGST Act,2017;
2. ICU Inc. is an intermediary and not providing any services to the Appellant.
3. The impugned order erred in concluding that the appellant has to pay to ICU Inc., for the privilege of using the Credit Cards

The impugned order erred in not considering the independent supplier of goods or services or both providing travel and conveyance services on which the service provider has raised invoice on the Appellant;

The impugned Order erred in holding that ICU Inc., is providing credit granting services to the Appellant;

The impugned order has erred in stating that the Appellant has to pay ICU Medical Inc. for the privilege of using the credit card; the impugned order has erred in not considering the fact that independent service providers provide travel and conveyance services on which the service provider has raised invoice on the Appellant independently. ICU Inc. merely collects the amount relating to such expenses relating to Appellant for settling the credit card dues;

The appellant is the recipient of goods or services and availing the eligible input tax credit based on the tax invoices issued by the suppliers

The payments made by the appellant to the ultimate holding company towards reimbursement of payments made towards credit card expenses are transaction in money and not a supply and consequently, the same is not liable to GST under Reverse Charge Mechanism.

**ISSUE OF THE CASE:**

Whether GST is leviable on the reimbursement of the subsidiary company to its ultimate holding company located in a foreign territory outside India?

In case GST is leviable, what is the GST rate applicable to the said reimbursement of expenses?

**Decision of Advance Ruling Authority :****DECISION:**

The travel related expenses are incurred through credit card of employees of the appellant; the reimbursements paid by the appellant to the holding company for the expenses incurred initially by its employees are nothing but part of software development cost and consequently part of the taxable value of services of appellant.

GST is therefore to be paid on such amounts of expenses reimbursed at the time determined as per Section 13 of the GST Act, as it represents the part of consideration received in advance by the appellant from its recipient (notwithstanding that the same is later included in tax invoice of the appellant) and to be paid at the time of reimbursement as by then the actual expenses borne by the recipient is known. Therefore, the first question sought by the appellant is answered in affirmative.

The applicable rate of GST on such expenses incurred by the recipient and reimbursed by the appellant is the same rate at which the appellant charges for the software development service supplied by the appellant to the overseas holding company, on the ground that the expenses are part of the taxable value of such services and attract the same rate indicated in the tax invoice for the software development charges issued by the appellant on the overseas holding company.

GST is leviable on the reimbursement amount, being advance payment made by the holding company towards the cost incurred for the provision of Software Services supplied by the appellant, as per the Time of Supply provided under Section 13 of the CGST/TNGST Act 2017 and applicable rate is that applicable to the supply of Software Services made by them. The subject appeal is disposed of accordingly.

Aggrieved by the decision of the AAR in pronouncing that the reimbursement is taxable at 18% under reverse charge mechanism.