

TAX INFO

Dated 10/12/2021

Latest update on GST Law: Information regarding **Reimbursement Of EPF And ESI Contribution Is Liable To Be Included In The Value Of Supply For The GST Levy** as given in **Ruling by AAR-Uttar Pradesh**.

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Name of Applicant	Lucknow Producers Cooperative Milk Union Ltd.
Authority	GST AAR Uttar Pradesh
Date of Ruling	16/04/2021
Ruling No.	UP ADRG 76/2021

Brief Facts of the Case:

The applicant is engaged in processing of milk and manufacturing of various milk products. The applicant is availing the services of various manpower supply agencies. They had agreement with different parties for supply of manpower. The agreement had two elements one is payment against services and second one is the discharge of their statutory liabilities against the workers compensation act like EPF, ESI or other statutory liabilities. The liability of deposit of said statutory liabilities has been shifted to service providers, which is subsequently reimbursed to them. Therefore, as per agreement, a service provider raises two bills- one for charges for the service and the other for reimbursement of discharge of statutory liabilities.

Questions on which the Ruling is Sought:

Whether GST liability arises on reimbursement of Employee Provided Fund & ESI?

Findings and Ruling:

As per the Work Order, the applicant pays wages and service charge to contractor and reimburses EPF, ESI, Service Tax, and Bonus after payment by the contractor.

The definition of 'consideration' includes any payment made in respect of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. Therefore, consideration would include the entire payment received by the contractor (manpower supplier) from the applicant and GST would be payable on the entire amount collected by them from the applicant which includes the salary amount/wages to be paid to the labours as well as the reimbursement of EPF and ESI contribution.

Section 15(1) of the Act 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 or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. 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. Therefore, it is apparent that the GST is chargeable on the entire amount received by contractor from the applicant.

The condition contained in Rule 33(iii) of the CGST Rules, 2017 provides that "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". 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 service only. Further, there is no contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of services. The Work Order simply provides that after deposit of EPF and ESI in the concerned department, the reimbursement will be done as per rule and there is no mention in the said Work Order that the contractor will deposit EPF and ESI as the pure agent of the applicant. Therefore, the contractor of the applicant does not fulfil the conditions of pure agent of the recipient of service i.e. the applicant.

Accordingly, GST is liable to be paid @18% (9% CGST and 9% SGST) on the reimbursement of EPF and ESI contribution as the same is liable to be included in the value of supply as per Section 15 of the CGST Act, 2017.

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