APPELLATE AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd& 4th Floor, VanijyikKar GST Bhawan, Sector-19, Atal Nagar,
Raipur (C.G.) 492002

PROCEEDING OF THE APPELLATE AUTHORITY FOR ADVANCE RULING U/s. 101 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Shri Sameer Vishnoi
Commissioner, State Tax,
Chhattisgarh, Raipur

Shri Navneet Goel
Chief Commissioner,
CGST & Central Excise,
Bhopal Zone

Sub:- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 101 :–

Advance Ruling U/s 101 sought by Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh, the appellant, a registered Service provider, GSTIN- 22AKDPB5992P1ZU, as to whether diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service charged by the appellant and whether GST would be leviable on value of diesel filled free of cost by the service recipient or otherwise under GTA service.

Read:- Appeal dated 02-02-2021 from Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh, the appellant, a registered Service provider, GSTIN- 22AKDPB5992P1ZU.

PROCEEDINGS

[U/s 101 of the Chhattisgarh Goods & Service Tax Act, 2017 (herein-after referred to as CGGST Act, 2017)]

No. STC/CG/AAAR/ 02 /2021/ Raipur, dated 28/2/2022

The Appellant Shri Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh GSTIN 22AKDPB5992P1ZU has filed this appeal u/s 100 of the Chhattisgarh Goods & Service Tax Act, 2017 requesting advance ruling in respect of the following question:-

1. Whether diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service

charged by the Appellant and whether GST would be leviable on value of diesel filled free of cost by the service recipient or otherwise under GTA service?

2. Facts of the case:-

2.1 M/s Shree Jeet Transport (Appellant) is a GTA service provider, engaged in providing services of transportation of goods by road. The Appellant intends to enter into contract with the service recipient for providing GTA services. As per the terms of the draft agreement:-

- The scope of service of the Appellant is to provide the truck/ trailer along with the driver and report at the unit of the service recipient.
- The Appellant is only responsible for the safe delivery of the consignment. Further, any accident or damage arising out of accident is the responsibility of the Appellant.
- The Appellant is also responsible to the drivers.
- The component of the fuel is not the responsibility of the Appellant nor is the same is in its scope of supply/work/service.
- The Appellant will be issuing consignment note/bilty (by whatever name called) for each vehicle load/consignment. The consignment note, inter-alia, will bear information such as the consigner, consignee, name of goods being transported, quantity of material loaded for transportation.
- On completion of the transport service (successful delivery of raw materials to the service recipient), the Appellant will raise invoice, charging freight for the GTA service provided. The invoice will carry the details of consignment notes for the GTA service provided.
- The Appellant will be accounting the freight charged from the service recipient as business revenue. Further the Appellant will be charging GST (under forward charge mechanism) on the freight so charged.
- With regard to the fuel, the same would be filled by the service recipient in the fuel tank of the vehicle placed by the Appellant and the property in diesel will not pass on to the Appellant. Considering that the same is not in their scope, the Appellant will not be accounting for the diesel.

2.2 Shri Arvinder Singh Bhatia had applied for advance ruling before AAR, Chhattisgarh on the issue:-

Whether diesel filled free of the cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service charged by the Appellant and whether GST would be leviable on value of

diesel filled free of cost by the service recipient or otherwise under GTA service?

2.3 Appellant is filling Appeal on the above question as mentioned in para (II) against the order of Authority for Advance ruling Chhattisgarh Goods and Service Tax bearing order number STC/AAR/07/2020 dated 04.01.2021 before the Appellate Authority for Advance Ruling in Chhattisgarh, Atal Nagar, Raipur (C.G.).

3. Contention of the Appellant:-

Aggrieved by the rejection of the application for advance ruling, the appellant has filed this appeal dated 02.02.2021 under Section 100 of the CGST Act, 2017 and CGGST Act, 2017, on the following grounds:-

3.1 The Appellant prays that the following question is to be addressed by the Hon'ble Appellate Authority for Advance Ruling (hereinafter 'AAAR'):-

Whether diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service charged by the Appellant and whether GST would be leviable on value of diesel filled free of cost by the service recipient or otherwise under GTA service?

3.2 The Appellant submitted that the issue involved in valuation of GTA service, wherein the Appellant would charging freight as consideration for the service provided by them to the recipient of service. The charging of freight consideration by Appellant is based on terms of contract between Appellant and the service recipient. Broadly speaking, the terms of the contract provides that the fuel (diesel), which would be required in providing the transport services, is in the scope of the recipient of service and not in the scope of the Appellant. Considering this contractual position, whether GST would be chargeable on the value of diesel used in **transportation of** goods belonging **to** the recipient of service.The Appellant contends that value of diesel, being not in Appellant's scope, is not part of freight consideration and hence is not exigible to GST, in support of their contention the Appellant has made elaborative submissions, which are summarized as under:-

a) Relevant terms of draft Contract with regard to diesel:

2.1 Fuel, a consumable, is in the scope of the Company and would be provided to the truck for use exclusively for the required transportation of the goods loaded in the truck.

2.2 Such fuel shall be filled in the truck that is engaged for the concerned trip at the point of origin or destination. The freight declared and agreed will not account for any cost/charge for fuel and the transporter would not have any liability to pay for fuel for the said trip to be made by the transporter. It is expressly clarified that the value of fuel which is in the scope of the company shall by no means be interpreted as additional consideration payable for the transportation service provided by the transporter or having been provided to the vehicle in lieu of freight. The said fuel would be issued by the company for the exclusive usage, as a consumable, in the underlying transportation only and the ownership of the fuel wood at no point be transferred to the transporter or to the vehicle engaged. The truck is required to use the fuel only for the specific transportation and would not be eligible to dispose of the same in any other manner. In case fuel is given at the destination, the quantity required would be as per the predetermined basis of the company and all the conditions specified here in would be applicable as a fuel has been given at the source.

b) That the aforesaid terms of the draft contract clearly stipulate that the diesel is in the scope of the service recipient. Further, the diesel will not be provided to the Appellant but will be filled in the truck deployed/placed by them for undertaking transportation of goods belonging to the service recipient. This fact is relevant considering that the Appellant also deploys and engages his own trucks as well as trucks hired from other truck owners. Considering these fact, since the Appellant is not liable to pay for the fuel and infact has nothing do with it, diesel does not forms part of consideration i.e. freight chargeable for the services so provided.

c) That the aforesaid terms of draft **contract also clearly** states that fuel would be filled for the required trip and that the vehicle is barred from using the fuel for any other purpose. This shows that property in the fuel does not pass to the Appellant and hence the same cannot form part of consideration from the recipient of service.

d) As per the terms of draft contract, the Appellant would be charging freight for the service of transportation provided to the recipient of supply. The freight so charged represents the consideration for the service provided. That since Appellant is not liable for the diesel and no activity will be performed and no responsibility will be assigned to the

Appellant for such diesel, no debit note/credit note will be issued by the Appellant on the service recipient towards the diesel.

e) That the charging of freight by the Appellant will be on completion of service i.e. delivery of the goods to the destined place. Towards the provision of service, the Appellant will issue Bilty/Consignment note signifying the transfer of responsibility on the Appellant to deliver the goods. The Bilty will contain the requisite details about the consignment and other relevant details. The Appellant on successful completion would raise invoice, wherein GST on the total amount of freight charged by the Appellant will be invoiced and on the total freight so charged/invoiced, the Appellant would be charging GST at the applicable rate under forward charge mechanism.

3.3 That for the purposes of levy of GST, Section 9 is the charging section. The levy of GST is on supply of goods or services which is in contrast to the position under the preceding laws of Excise Act where levy arose on manufacture, Finance Act 1994 where levy arose on the provision of services and the State VAT Act, where levy arose on sale. Hence, under the GST Act, taxable event is not on manufacture/ sale/provision of service but the tax is on specific activity (supply) undertaken by the supplier/service provider. Thus, under GST laws the tax is leviable only on the contractual activities that are obligated to be carried out by the supplier/ service provider. As the cost of fuel is not under the contractual obligation of the Appellant/ GTA service provider, value of the same cannot be included for the purposes of determination of GST at the end of the Appellant. In support of his contention, that levy of GST is based on activity undertaken by the supplier determined in terms of contractual scope between the supplier and the recipient, Appellant placed reliance on judgment of Hon'ble Gujarat High Court in Mohit Minerals [2020 (1) TMI 974] and Hon'ble Kerela High Court in case of Shree Golden Jewels Vs. STO [2019 (62) GSTR 207].

3.4 That the Section 15(1) of CGST Act, 2017 clearly provides that price actually paid or payable for supply of goods/services is to be the value of supply. That in their case, the freight to be charged is the price actually paid or payable, as apart to the freight charged, no other amount would be charged from the service recipient. Further the Section 15(2)(b) states that the price actually paid/payable shall include the value of goods or service that the supplier is liable to pay but has been incurred by the recipient of service. Hence the trigger of Section 15(2) (b) applies only when the contractual liability is that of the supplier, but the same is stands paid by the recipient of supply. Since in their case, the Appellant are not liable to pay for the diesel and it is outside their

scope, the value of the diesels cannot be added to the amount charged/price paid payable. In support of their contention reliance was placed on ruling of AAAR, Karnataka in case of Nash Industries [2019 (3) TMI 435], AAR, Maharashtra in case of Lear Automotive [2018 (12) TMI 766] and Circular No. 47/27/2018-GST dated 08.06.2018 wherein it is clarified that tools, moulds and dies which are in scope of recipient of supply and provided to supplier on FOC (free of cost basis) for manufacturing goods for the recipient of supply, are outside the scope of section 15(2)(b) and hence not exigible to GST.

3.5 That the transaction is otherwise revenue neutral as the recipient of service is eligible to avail input tax credit of GST chargeable on the GTA service provided by the Appellant. However, eligible to input tax credit cannot be the basis to charge GST which is otherwise not chargeable.

3.6 That the Appellant is otherwise prevented from charging GST on account of impossibility of compliance, as because the diesel in this case would be procured by the recipient of supply as it is in recipient's scope and considering that the diesel will not be issued to the Appellant, but filled directly in the fuel tank of the truck after loading of the material, the Appellant will be unware of the rate and quantity of diesel so filled, it will not be possible for him to charge GST on the value of diesel. That such impossibility of compliance is impermissible and cannot be the intention of GST law.

3.7 The Appellant furthermore submitted that under the GST law deeming fiction has been created to charge FOC supplies i.e. supply made without consideration. Such deemed taxable FOC supplies have been specified in Schedule- I to the CGST Act. A perusal of the Schedule-I makes it clear that the deeming fiction does not apply to the transaction under consideration. Hence, absence of free diesel transactions between unrelated parties from Schedule-I clearly shows that the law does not seek to levy GST on such transactions.

3.8 Appellant also referred to the model GST law and compared the section 15 thereto with the presently enacted section 15 of CGST, Act 2017 and contended that in the model GST law, the draft law provided to levy GST on FOC supplies made by recipient of service, however, such provision was omitted in the enacted GST Act, 2017. This also makes clear that the GST Act, 2017 does not intend to levy GST of FOC supplies made by the recipient of supply.

3.9 The Appellant also placed reliance on judgments of Supreme Courts and Tribunal to contend that similar issue of FOC supply of diesel by the recipient

of service has been examined under the erstwhile Finance Act, 1994 and it has been all along held that the FOC diesel supplied does not forms part of the gross amount charged for the service and hence not liable to Service Tax. In many of these judgments, Revenue Department argued that diesel forms essential part of providing service and without the same the service cannot be envisaged, however this argument of the Revenue Department has been declined all along. Following judgments are relied upon by the Appellant:

- Jain Carrying Corporation v. CCE Jaipur [2019 (3) TMI 864] CESTAT New Delhi
- R.K. Transport Company v. CCE [2020 (11) TMI 34] CESTAT New Delhi
- Heligo Charters Pvt. Ltd. v. CST Mumbai-VI [2020 (4) TMI 182] CESTAT Mumbai
- Ganpati Associates, Munshi Lal Durga Prasad v. CCE Jaipur 2019 (5) TMI 1233 – CESTAT New Delhi
- Karamjeet Singh & Co Ltd v. CCE [2017 (9) TMI 1125] CESTAT New Delhi, which is also affirmed by Hon'ble Supreme Court
- CST v. Bhayana Builders P Ltd [2018(2) TMI 435] – Hon'ble Supreme Court
- UOI v. Intercontinental Consultants and Technocrafts Pvt Ltd [2018 (3) TMI 357] Hon'ble Supreme Court

3.10 With regard to the impugned order of AAR, the Appellant contended that the Ld. AAR erred in holding that the diesel would be liable to GST. The Appellant submitted that the Ld AAR made following infirmities:-

- The Impugned Order has mis-read and misapplied the charging section under GST laws. Because unlike the erstwhile regime of Excise, VAT and Service Tax, GST laws is an activity-based tax. The charge is only on the activity a supplier/ service provider undertakes to carry out. The tax is on value addition of the supplier/ service provider. Hence, as the Appellant's activity to undertake transportation without being responsible for diesel cost; the charge and the value of tax can only be restricted to that part of the amount received by the Appellant from the service receivers.
- The Order erred in disregarding settled judicial pronouncements to hold that diesel being an essential input, will form part of the value of service irrespective to the fact that it is not in scope of Appellant. It is relevant to reiterate that in the judgments relied upon the Appellants, this very issue had been raised by the Department Authorities, but it has been consistently held by judicial forums that value of FOC diesel cannot be added in the value of service.
- The Impugned Order has mis-applied the business process test. It is settled law by the Hon'ble Supreme Court that commercial expediency

has to be adjudged from the point of view of the assessee and the Tax department cannot enter into the ticket of reasonableness of amount paid by the assessee [Shiv Raj Gupta v. CIT 2020 (7) TMI-SC]. Thus, the Revenue authorities cannot comment as to why diesel will be being given 'free of cost' or if diesel will be supplied 'free of cost' today than in the coming times the trucks/trailers may also be given 'free of cost' which will cause revenue loss to the exchequer.

- The Impugned Order has misread and misapplied Section 15 as because Section 15 only seeks to add that non-monetary consideration which was within the scope of work of the supplier/service provider. In the issue at hand, since diesel will not be in the scope of work of the Appellant there cannot be any inclusion of diesel with reference to the GTA service carried out by the Appellant. Further in the case at hand, the parties (Appellant/service provider and service recipient) are unrelated to each other.
- The impugned order has also not dealt with provision of Section 15(2) (b) which is relevant to decide the issue at hand. Further, the submission made by the Appellant on this ground has out-rightly been brushed away.
- That the impugned Order has incorrectly applied section 15(4) of CGST Act to the present matter. This matter is not of any non-monetary consideration flowing from the service receiver to the Appellant (service provider). Hence, the valuation rules have no application for the present matter.
- The impugned Order has also failed to consider Schedule I of the CGST Act, which by deeming fiction seeks to **include** non-monetary consideration transactions. The absence of the present transaction under the deeming fiction of the Schedule I clearly establishes that the legislature did not intend such transactions to be taxable.
- The Impugned Order has failed to consider that the final (enacted) GST law did not incorporate the 'free of cost' valuation mechanism which was suggested in the draft GST law by GST council.
- The Impugned Order has incorrectly applied 'consideration' as understood under GST laws. The extended meaning of the term 'consideration' has been applied only on the basis of inferences without any corroborative evidence.
- The Order has completely mis-read and mis-applied the decision of the Hon'ble Supreme Court given in the case of UOI v. Intercontinental Consultants and Technocrats Private Limited 2018 (10) GSTL 401 (SC). As per this decision, "gross amount charged" can only be the value attributable to the work/service carried out by a service provider.

- The Impugned Order has failed to apply the GST Circular dated 08.06.2018. This Circular clearly decides the issue in favour of the Appellant.
- The Impugned Order erred in brushing aside the submissions of the Appellant that 'free of cost diesel' was a standard practice in various trades, be it transportation, mining activities etc. Various decisions in the Service tax regime dealing with identical issues were explained to the Authority as referred above. However, the Authority erred in side stepping rationale of these decisions.
- The impugned order has ignored the aspect that transaction is revenue neutral as the service recipient is entitled to input tax credit of GST charged. However, admissibility of input tax credit cannot be the reason for levying GST beyond the provisions of law. Further, the aspect of revenue neutrality also makes it clear that the Appellant cannot have any intention to circumvent the provisions of law or to avoid incidence of tax. This averment in the impugned order is out-rightly fallacious and would be violate article 265 of the Constitution as no tax can be imposed without authority of law.
- The impugned order has also avoided intentionally the facts of the case of Navodit Agarwal [STC/AAR/10/2018 dated 26.03.19], wherein the value of diesel was being recovered by the service recipient from the GTA (service provider) by way of debit note, but has declined the contention of Appellant by holding that GST will be leviable on FOC diesel which is not in scope of the Appellant.
- Lastly, the Impugned Order has not dealt with the draft agreement/ proposed transactions in the realm of a commercial transaction but has merely attempted to justify legal infirmities under the garb of safeguarding so called interests of exchequer.

4. **Personal hearing:-**

In accordance with established principles of natural justice, personal hearing in the matter was extended to the authorized representative and Advocate of the Appellant on 17.03.2021, 28.06.2021 and on 16.07.2021 wherein on all the three occasions, adjournment was prayed by the Advocate of the Appellant Mr. Vivek Sharma of Sarvada Legal. The appellant was given another opportunity of personal hearing on 06.10.2021through virtual mode. Mr. Vivek Sharma, Advocate of the Appellant appeared for virtual hearing on 06.10.2021. He furnished a written submission along with a paper book and reiterated the same and which has been taken on record.

Legal position, Analysis and Discussion:-

5. Findings as per the CGST Member-

I have carefully gone through the submissions made by the appellant in his application as well as the submissions made at the time of personal hearing.

5.1 At the very outset, I would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and CGGST Act"] are similar and thus, 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 CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the instant appeal filed by the Appellant along with provisions applicable in the present case. The present appeal has been filed under section 100(1) of the Central Goods and Service Tax Act, 2017 and the CGGST Act, 2017 by the Appellant Mr. Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh and GSTIN, against the Advance Ruling Order No. AD220820000440, dated 04.01.2021.

5.2 The Appellant is providing GTA services. It is seen that the Appellant is about to enter into contract for providing GTA services of transportation of goods by road to service recipient(s). The terms of contract provide that the Appellant would be providing transportation services to transport goods belonging to the service recipients. Such transportation services will be provided by the Appellant by engaging vehicles. The Appellant/Transporter would be charging freight for the GTA services provided. The terms of contract state that the diesel required in providing the transport services shall be in the scope of service recipient and that procedure described in the contract elaborately explains that the diesel, as required for the trip, will be directly filled into the truck/vehicle by the service recipient. Relevant terms of draft Contract with regard to diesel are produced below:

> *2.1 Fuel, a consumable, is in the scope of the Company and would be provided to the truck for use exclusively for the required transportation of the goods loaded in the truck.*
>
> *2.2 Such fuel shall be filled in the truck that is engaged for the concerned trip at the point of origin or destination. The freight declared and agreed will not account for any cost/charge for fuel and the transporter would not have any liability to pay for fuel for the said trip to be made by the transporter. It is expressly clarified that the value of fuel which is in the scope of the*

company shall by no means be interpreted as additional consideration payable for the transportation service provided by the transporter or having been provided to the vehicle in lieu of freight. The said fuel would be issued by the company for the exclusive usage, as a consumable, in the underlying transportation only and the ownership of the fuel wood at no point be transferred to the transporter or to the vehicle engaged. The truck is required to use the fuel only for the specific transportation and would not be eligible to dispose of the same in any other manner. In case fuel is given at the destination, the quantity required would be as per the predetermined basis of the company and all the conditions specified here in would be applicable as a fuel has been given at the source.

5.3 Considering these major facts, we are required to answer whether the value of diesel, as lying in the scope of the service recipient, is chargeable to GST by adding to the freight amount charged by the Appellant?

5.4 In this regard, relevant provisions of the GST Act are reproduced below:

Section 2(31) of the CGST ACT, 2017 defines consideration as:

Consideration in relation to the supply of goods or services includes

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the CentralGovernment or a State Government;

(b) The monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

PROVIDED that a deposit, given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies the deposit as consideration for the said supply;

Section 7 (1) of CGST Act, 2017:

For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or

agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Section 15 of CGST Act 2017:

Value of taxable supply:

(1) The value of a 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.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.[7]

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.[8]

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognized partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

5.5 I have examined the copy of Draft Model Agreement submitted by the appellant. Para 3.4 of the Draft Model Agreement is reproduced below

"The Transporter will ensure that specific LR/GR book and pre-numbered machine serial are issued exclusively for the purpose of transportation of material from the Company's plant to various Units".

'Goods transport agency' is defined in para 2(ze) of Notification No.12/2017-Central Tax (Rate) dated 28-06-2017 as follows:

(ze) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

I find that the definition contemplates satisfaction of following ingredients for any agency to be termed as a goods transport agency- The agency must be a person and it must provide the services in relation to transport of goods by road and must issue consignment note by whatever name called. It is clear that the applicant is providing GTA service. The AAR in its order has held that the value of diesel would form part of the freight consideration and that the diesel is consideration as it is payment made by the service recipient in course of furtherance of business.

5.6 I find that diesel is the single most essential expense required to be borne by the service provider in rendering GTA, as the service involves performing the activity of transportation service through vehicle that ply on road using diesel as fuel. Therefore, provision of GTA envisages providing a vehicle in running condition with requisite fuel being a mandatory component without which the service of GTA cannot be conceived or performed. Thus, the supply of GTA service would essentially involve the supplier to bear the cost of fuel i.e. diesel which cannot be isolated through a contractual arrangement. And even if the diesel is provided by the service recipient for having an effective control over the activity specially performed for them, the value of the same will have to be considered as additional consideration flowing from the recipient to the service provider. In view of the above, I find that the diesel is an essential part and without the same the GTA service cannot be performed. Diesel provided on FOC basis under terms of the contract is purely consideration as per Section 2(31) of the CGST ACT, 2017.

5.7 I find that Section 15(2)(b) of CGST Act is very clear which stipulates that the value of supply includes any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

5.8 In view of the above, I find that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both is includible in value.

5.9 I find that the Appellant, has cited various case laws in support of their contention- Jain Carrying Corporation v. CCE Jaipur [2019 (3) TMI 864] CESTAT New Delhi, R.K. Transport Company v. CCE [2020 (11) TMI 34] CESTAT New Delhi, Heligo Charters Pvt. Ltd. v. CST Mumbai-VI [2020 (4) TMI 182] CESTAT Mumbai, Ganpati Associates, Munshi Lal Durga Prasad v. CCE Jaipur 2019 (5) TMI 1233 – CESTAT New Delhi, Karamjeet Singh & Co Ltd v. CCE [2017 (9) TMI 1125] CESTAT New Delhi.

5.10 I have carefully examined the aforesaid judgments. All the above case laws pertain to the erstwhile service tax regime, i.e. prior to April'2012. I find that out of the five judgments, only three i.e. Jain Carrying Corporation v. CCE Jaipur [2019 (3) TMI 864] CESTAT New Delhi, R.K. Transport Company v. CCE [2020 (11) TMI 34] CESTAT New Delhi and Ganpati Associates, Munshi Lal Durga Prasad v. CCE Jaipur 2019 (5) TMI 1233 – CESTAT New Delhi, are concerned with the present matter.

As regards to other cases, in the case of Heligo Charters Pvt. Ltd., the assessee was engaged in the business of providing helicopters on charter hire basis to ONGC for transportation of personnel and cargo of ONGC as per their requirement and the dispute was whether the assessee is providing "Business Support Service" or "supply of tangible goods for use without transfer of right of possession and effective control" for levying service tax liability under RCM. Hence, the issue involved in this case has no similarity with the present case and thus has no bearing on it.

In the case of Karamjeet Singh, the assessee was getting work orders from the Western Coal Fields for mining activities and in addition, the work contracts were for transportation of coal from the pit head to the coal yard though within the mining area. The dispute in the case was whether the assessee is providing "mining service" or "GTA Service". In this case, there was no dispute as regard addition of cost of FOC diesel etc., hence this case has no bearing on the present dispute.

5.11 The three relevant judgments pertain to the period of dispute prior to April 2012 and have placed reliance on the decision of Hon'ble Supreme Court in Commissioner of Service Tax v/s Bhayana Builders

(P) Ltd. In this Judgment the scope of Section 67 of the erstwhile Finance Act 1994, which dealt with the valuation of taxable services for charging Service tax has been discussed. It was held that the cost of free supply of goods provided by the service recipient to the service provider is neither an amount charged by the service provider nor can it be regarded as a consideration for the service provided by the service provider. The Hon'ble Supreme Court had reached the said conclusion in light of the provisions of Section 67 of the Finance Act as it existed at the relevant time.

5.12 Furthermore, I am of the view that provisions of Section 67 of the Finance Act as it existed at the relevant time differs from Section 15(1) of the GST Act as discussed herein below.

5.13 Section 67 of the Finance Act 1994, as prevailing in the relevant period read as follows.

67. Valuation of taxable services for charging service tax

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation.-For the purposes of this section,-

4[(a) "consideration" includes-

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.]

3[*]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and 2[book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]

5.14 Section 15(2)(b) of the CGST Act, 2017 reads as under-

Section 15 of CGST Act 2017:

Value of taxable supply:

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

5.15 From the reading of the above two provisions, it is clear that the provision in Section 15(2)(b) of the CGST Act, 2017 are different from the provisions of the Service Tax Law. The decision of the apex court in Commissioner of Service Tax v/s Bhayana Builders (P) Ltd. is based on the interpretation of Section 67 of the Finance Act 1994. According to this section the value of services shall be limited to the gross amount charged by the service provider for the service provided or to be provided by him

Section 15(2)(b) of the CGST Act, however, stipulates that the value of supply shall also include amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

In GTA service, Diesel is an essential component/expense for supply of GTA service. In absence of fuel/ diesel, the appellant will not be able to provide GTA service. It becomes incumbent upon the GTA service provider to bear the cost of fuel in order to provide the service of GTA. Merely because the service recipient is providing fuel to the truck which was used by the GTA service provider to provide the requisite service, in terms of the contract, does not take the price of fuel outside the value of supply and nor does it go outside the purview of Section 15(2)(b) of the CGST Act. This view has been held in para 5.6 & 5.7 of the signed order copy of AAAR, as referred above. Since the contents of Section 15(2)(b) of the CGST Act, 2017 is different from the contents of Section 67of the Finance Act 1994, and the issue in present appeal relates to GST matter, the ratio of decision of the apex court in Commissioner of Service Tax v/s Bhayana Builders (P) Ltd. will not apply in this case.

5.16 Attention is also invited to the Judgment of Hon'ble CESTAT, South Zonal bench, Chennai in the case of Stage 3 Ace Eventz Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai, Final order No. 40573 dated 13.2.2020. This case distinguishes the order of the apex court in Commissioner of Service Tax v/s Bhayana Builders (P) Ltd. The case related to event management service where the appellant was rendering services like organizing events of rock shows, corporate shows, marriages, promotions etc. and collecting charges for conduct of the events. It entered into separate contracts with the party- one for

providing music systems etc on rent and the other for providing event management services. The issue was whether the charges for providing music systems etc should be added to the value of providing event management service. Hon'ble Tribunal held that in the present case the contracts are artificially bifurcated so as to exclude the charges incurred in use of the goods for providing Event Management Services, which is not permissible. The demand of duty was confirmed. The ratio of this judgment is squarely applicable in the present appeal.

5.17 Further, it is noticed that applicant has quoted the circular no. 47/21/2018-GST dated 08.06.2018 issued by the in support of their claims. The relevant part of this circular clarifies as under –

1.1 Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM.

1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short).

1.3 However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

5.18 It may be seen that the circular no. 47/21/2018-GST dated 08.06.2018 issued by the CBIC clarifies a specific situation where moulds and dies owned by Original Equipment Manufacturers (OEM) are sent free of cost (FOC) to a component manufacturer The circular

clarifies that in case the component manufacturer was supposed to supply components manufactured out of his own moulds & dies then the amortized cost of such moulds & dies shall be added even if they are sent FOC by the OEM manufacturer, otherwise not. The circular clarifies about the addition of the cost of moulds and dies, which are in the nature of capital goods that are used multiple times during the course of manufacture for making different components.

In the instant appeal the issue is different. Diesel which is used for providing the GTA service is a consumable and not capital goods. It is an essential component for supply of GTA service and in absence of fuel/ diesel, the appellant will not be able to provide the requisite service. Since the issue, as discussed in the said circular is entirely different from the issue in this appeal, the said circular is not applicable to this case.

5.19 I also agree with the observation of Ld. AAR and have correctly held as under:

"In the case of supply of components, which is supply of goods and not service, unlike in this case it is to be noted that components manufactured for the Original Equipment manufacturer (OEM), are a tailor made item and it is manufactured using moulds/die by the component manufacturer as per the specifications and design as required by the OEM, for its further use in the subsequent manufacture of Original equipment i.e. for the furtherance of business, whereas in the case of provisions of transportation service fuel is used by the GTA in his vehicle for provision of said transportation service. Further unlike fuel which gets consumed instantly during the very provision of the said transportation service, there is no such case of moulds/ dies getting consumed instantaneously. Here also it is to be noted that the said cited circular at para 1.3 in very unambiguous terms provide for reversal of Input tax credit on such moulds / dies which have been supplied by the Original equipment manufacturer when the contract was for supply of components made by using moulds / dies belonging to component manufacturer. Whereas, in the case in hand there cannot be any such reversal of ITC on diesel, diesel being out of the purview of GST as discussed in the preceding para. It will also be not out of place to mention here that in the intended transaction in the instant case in hand, the value of diesel purportedly to be provided free of cost, will be charged as, "expense" by the service receiver in his books of account and will not go unaccounted in the books of the service receiver."

5.20 Further, I find that the argument advanced by the appellant is that the cost of raw material / consumables should not be added in the value of the final product if it has been supplied FOC by the recipient.

In GTA service, the fuel is the most important input for providing the transportation service. Chemical energy in the fuel is converted into kinetic energy via combustion in the IC Engine of the vehicle. This Kinetic energy of fuel finally propels the vehicle. Therefore, it is the energy of fuel which enables the movement of vehicles. Without the input of fuel, the applicant will not be able to move his vehicles or in other words, he will not be able to provide the GTA service.

As per arguments of the applicant, if a recipient supplies free steel to a steel casting manufacturer who makes steel castings and then supplies them back to the recipient, then the cost of steel should not be added to the value of steel casting. This is just not acceptable. The GST laws and in fact the Central Excise and Service Tax laws before that have always envisaged that the cost of inputs and consumables shall always be added to the value of the final product / service.

There are provisions to offset the tax on inputs / input services but then a prescribed procedure is required to be followed. This procedure has been prescribed in MODVAT/ CENVAT rules.

In the instant case the appellant is aware that there is no input tax credit available on fuel. He is therefore trying to circumvent the GST laws to lessen the GST liability by artificially bifurcating fuel expense and thus not including the same in value of taxable supply. This is clearly not permissible.

5.21 Thus I find no reason to differ from the findings of the Authority of Advance Ruling, Chhattisgarh under its order No.STC/AAR/07/2020 Raipur dated 04/01/2021 that diesel to be filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles as per the proposed draft agreement would form part of value of supply of service charged by the appellant and accordingly GST at the applicable rate would also be leviable on the value inclusive of the cost of diesel filled by the service recipient, under GTA service and there is no merit in the appeal filed by the Appellant Shri Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh having GSTIN- 22AKDPB5992PIZU against the Advance Ruling Order dated 04/0112021.

6. Findings as per the SGST Member –

6.1 As per circular no. 47/21/2018-GST dated 08.06.2018, CBIC has clarified that GST is applicable on the value of supply charged by the service provider as per contract and not on the material which is not in scope of service provider. In the instant case, as per the contract between the appellant and the service recipient, the appellant is charging freight as the consideration for the service provided by them to the recipient of service and not charging any consideration for the diesel filled by the service recipient free of cost in the engaged chartered (dedicated) vehicles. Hence GST would be leviable only on the freight component of the service provided and not on the value which is inclusive of the cost of diesel filled by the service recipient.

6.2 The Appellant to support his case submitted that in the draft GST law, provision for levying GST on FOC goods supplied by service recipient as per the terms of contract was contained whereas in the final enacted GST Act, 2017 this provision was removed. The draft GST law stated that *"the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued"*, but in enacted GST law it was deleted. In my view this makes clear that the Section 15 as contained in the CGST Act 2017 does not include the value of FOC goods supplied by service recipient as per terms of contract. My view gets affirmed from the fact that both the draft GST law and enacted GST law contain the provision *"any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and....;"*.

6.3 Scope of supply is provided in Section 7 of CGST Act read with schedules thereto. FOC supply made without consideration has been included in the scope of supply vide Section 7(1)(c) read with the First Schedule to the CGST Act. Perusal of the First Schedule makes clear that FOC supply made between unrelated parties under the terms of contract are not taxable supplies. Further, having considered section 15(2)(b) which provides that "*any amount* that the *supplier is liable to payin relation to such supply* but which has been incurred by the recipient of the supply" does not include FOC diesel for the simple reason that the liability to pay for the diesel as per draft contract is of service recipient.

6.4 GTA service was taxed for the first time in the year 2005. Post introduction of negative list of services in the year 2012, GTA service remained unchanged and in CGST Act, 2017 its taxability remains the

same with a facility that option is available to GTA to deposit tax under forward charge else this can be continued under reverse charge. The inadmissibility of input credit of Excise Duty or GST deposited on diesel also remains same. Thus I agree with the view given by AAR that the provisions of Finance Act and GST Act are symmetrical for the issue under consideration. In my view the judgment of Karamjeet Singh & Co. [2017 (9) TMI 1125] as upheld by Supreme Courtalongwith other judgment relied by Appellant on this point cannot be brushed aside on the ground that they pertain to service tax regime. In-fact those rulings were on FOC diesel by service recipient for GTA service hence will squarely apply to the issue under consideration. In rulings the Courts adjudged the argument that diesel is an essential input with finding that FOC diesel cannot be added in the value of service.

6.5 Appellant has submitted that in the case at hand, the transaction is revenue neutral as the service recipient is eligible to claim input tax credit of GST charged on the GTA service. On the contrary the AAR in its order has contended that the present terms of the contract have been designed with intent to circumvent the provisions of GST law and to avoid incidence of tax. In my view AAR on this aspect is not correct because when input tax credit of GTA service is admissible to the service recipient, non-charging of GST will not lessen the revenue to the exchequer on end to end basis.

6.6 Appellant has referred to the terms of contract to contend that the FOC diesel is not consideration for them as the diesel is not supplied to them, but the diesel would be filled in the fuel tank of the truck engaged after loading the goods and it can be used only for transporting the goods of service recipient. In this regard the Board Circular 47/27/2018 has clarified that the Moulds and dies provided on FOC basis by the recipient of supply is not consideration. The Board circular has been relied upon by AAR Maharashtra in GST-ARA-19/2018-19/B-80 given in case of Lear Automotive, in this order similar issue of FOC goods supplied by recipient of supply to the supplier as per the terms of the contract was decided. While deciding the issue, AAR Maharashtra had taken on record Australian GST ruling 2001/6 for reasons that the definition of consideration given in section 2(31) of CGST Act, 2017 is identical in Australian GST and AAR, Maharashtra after examining the issue has held that FOC goods supplied by recipient of supply are not includible in the value of supply. Similar decision has been given by co-ordinate bench of AAAR, Karnataka in case of Nash Industries Ltd. in KAR/AAAR/07/2018-19.

6.7 Therefore, in light of the above, in my view the value of diesel which is

in the scope of service recipient would not be included in taxable value of supply of the service provider.

7. Having regard to the facts and circumstances of the case and discussions as above, and in view of the fact that both members are not in agreement, we dispose of the instant appeal filed by Shri Arvinder Singh Bhatia, the Appellant by passing the following order:

ORDER

(Under section 101(1) of the CGGST Act, 2017)

No. STC/GG/AAAR/02/2021 Dated. 28/2/2022

The issue is not answered and it is deemed that no ruling is issued under Section 101(3) of the CGST/ CG SGST Act, 2017 because of the divergence of opinion between the two members.

Sameer Vishnoi
Commissioner
(Member)

Navneet Goel 18/2/22
Chief Commissioner
(Member)

Place:- Raipur

Date:- 28/2/2022

Seal:-