BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING IN GOODS AND SERVICES TAX, IN THE STATE OF HARYANA,PANCHKULA

Appeal Case No.: HAAAR/2020-21/11 **Dated: 27.11.2020**

GSTIN of the Applicant	06AAACE0593RIZ9
Name	**M/s Beumer India Pvt. Ltd.,**
Address/Registered Address provided while obtaining user ID	M/s Beumer India Pvt. Ltd., 157, Naurangpur, Sector 78, Gurugram-122004, Haryana
Present for the Applicant	S/Sh. Rajat Mohan, CA; Rajesh Kumar, Sr. Manager; Bharat Sharma, Dy. Manager.

Order under Section 101 of Central Goods and Services Tax Act,2017 / Haryana Good and Services Tax Act, 2017

The present appeal has been filed under Section 100 (1) of Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act,2017 (hereinafter referred to as CGST Act/ HGST Act, respectively)by M/s Beumer India Pvt. Ltd. (hereinafter referred to as the "Appellant") against the Advance Ruling No. HAR/HAAR/R/2020-21/01 issued vide Memo Number 2980 dated 29.10.2020, in Application received by AAR on 13.08.2020.

A copy of order dated 29.10.2020 of the Advance Ruling Authority was received by the appellant reportedly on 12.11.2020 and the appeal has been filed on 27.11.2020 which is within time.

I. BRIEF FACTS OF THE CASE:

M/s Beumer India Pvt. Ltd., Gurugram is engaged in the business of manufacturing/trading of Intralogistics System. They have hired Motor Vehicles on contract basis from a Transport Agency. They are using said vehicles to provide transportation facility to employees in accordance with their human resource policy at either a nominal cost where the vehicles are air conditioned, or free of cost in other cases.

Questions for Advance Ruling:

Applicant had requested for Advance Ruling on:

a. *Whether GST is payable on transportation facility provided by the employer (Applicant) to its employees for travel between predefined location to its the office, free of cost i.e. without any recovery being made from them. If yes what would be taxable value of the said transaction?*

b. Whether GST is payable on the recovery of nominal amount on account of air conditioning facility for transportation facility provided by the employer (Applicant) to its employees for travel between predefined location. If yes then what would be the taxable value in the said transaction?

Ruling by Advance Ruling Authority

The Authority for Advance Ruling (AAR) observed that the Business of the Applicant is manufacturing/ trading of intralogistics system which is duly

covered in the definition of business and the transport facility being provided to the employees is in the furtherance of the business.

As to the first question whether GST is payable on the transportation facility provided by the Applicant to its employees for travel to office free of cost, the AAR ruled:

> *"The abovementioned Service is taxable under the provision of the HGST/ CGST/ IGST Acts. For valuation of such services the provisions under Section 15 of the CGST/ HGST Acts are applicable".*

As to the second question whether GST is payable on the recovery of nominal amount on account of air-conditioning of transportation facility provided by the Applicant to its employees for travel to office, the AAR ruled:

> *"The abovementioned Service is taxable under the provision of the HGST/ CGST/ IGST Acts. For valuation of such services, the provisions under Section 15 of the CGST/ HGST Acts are applicable".*

II. GROUNDS OF APPEAL:

Being aggrieved with the impugned order, the appellant filed the appeal with the Grounds of Appeal mentioned in Annexure-II. These are briefly enlisted below:

a. Authority for Advance Ruling (AAR)'s inferences are extraneous, vague and ambiguous;

b. AAR hasn't mentioned as to how FBT allowance is a consideration;

c. AAR has wrongly correlated FBT allowance and the transportation facility whereas there is no correlation between the FBT Allowance and the Transportation Facility;

d. AAR has wrongly interpreted the HR Policy. It doesn't specify that employee not availing transportation facility will get FBT allowance;

e. AAR mentions that element of consideration is present but doesn't specify as to how element of consideration is present;

f. AAR mentions that Schedule-III is not applicable to transportation facility provided by Appellant but doesn't clarify as to how it is not applicable.

g. AAR has concluded that the activity of provisioning transportation facility is in the Appellant's furtherance of business but hasn't taken into consideration the CBIC's press release dated 10.07.2017 which clarifies that supplies by employer to employee in terms of contractual agreement of employment which is treated as a part of salary is not subject to GST

h. AAR has held the Advance Rulings by other states as not applicable but has not provided reasons therefor;

i. The Advance Ruling pronounced in the case of Tata Motors Ltd. by AAR Maharashtra relied upon by the Appellant in their additional submissions have not been taken into consideration by the AAR;

j. AAR has provided that the activity of providing transportation facility is not exempt whereas the Appellant had not requested for any advance ruling as to exemption;

k. The Ruling granted by AAR that determination of valuation shall be according to Section 15, is ambiguous;

The Appellant made further submitted following as theirGrounds of Appeal on 23-03-2021:

1. That there is no correlation between FBP (Flexible Benefit Plan) allowance and transportation facility and the Hon'ble AAR has erred in linking the two in its order. Such linking is not supported by any documentary evidence submitted by the applicant. The FBP is a separate car leasing policy provided to employees and doesn't include any component related to conveyance.

2. That the AAR has wrongly drawn conclusions regarding the employees getting additional benefit in lieu of not availing transportation facility, which is in fact an allowance under CLP (Car leasing Policy). The applicant has also submitted a copy of CLP in support of the same.

3. That as per their understanding transportation facility provided free of cost or against nominal recovery doesn't fall under the definition of consideration. It was incorrect of the AAR to state that there is consideration present in the applicant's case.

4. That the Hon'ble AAR has wrongly compared the CSR (Corporate Social Responsibility) activities of the company (that of providing transportation facility to employees) to supply in furtherance of business. According to the applicant the comparison doesn't hold merit as the CSR is a mandatory requirement under Companies Act, 2013; the non-compliance of which may lead to heavy penalties and legal repercussions and may impact the operations of the company to a large extent. Hence this act cannot be said to be done in course of furtherance of business as the two activities are not alike.

5. That the transportation facility is provided to the employees is in course of or in relation to its employment has been rejected by AAR without giving clear reason. The Authority stated in its order that the same in not covered under Schedule III whereas the applicant is of the view that :

   "...if any benefit , by whatever name called, is a right of the employee in terms of the employment contract/ employee policy of the entity, then such benefit shall be treated as emoluments arising out of employment and cannot be treated as a supply and is duly covered by Entry 1 of Schedule III of CGST Act, 2017."

The applicant has also submitted a Press release from government dated 10-07-2017 and advance ruling by AAR, Maharashtra in the similar case of Tata Motors Ltd. which rules that such services will not be subjected to GST.

6. that the AAR has given ruling on questions not asked by him (as per para 5.7 of the said ruling), thereby overriding the provision of section 98(4) of the CGST Act, 2017 as it only gives the authority to pronounce a ruling on the questions specified in the application.

7. That the AAR has not given clear and unambiguous ruling w.r.t valuation of such transport services in the questions raised by him and concludes by saying that the Hon'ble AAR has erred both in facts and in law by giving the impugned order which deserves to be set aside. As per his understanding such service, being covered under Entry 1 of Schedule III of CGST Act, doesn't fall under the definition of supply and consequently GST is not leviable on it.

III. RECORD OF PERSONAL HEARING:

S/Sh. Rajat Mohan, CA; Rajesh Kumar, Sr. Manager; Bharat Sharma, Dy. Manager attended the PH on 25.08.2021 on behalf of the appellant M/s Beumer India Pvt. Ltd. They vehemently pleaded that the transactions within employer-employee relationship have not been envisaged to be taxed under GST. That, this was amply clear from the by the PRESS RELEASE dated 10.07.2017 of the government.

Additionally they reiterated in details the grounds already mentioned in the memorandum of the Appeal and emphasized that the transport facility being a part of their HR policy, squarely is a transaction within employer-employee relationship and thus out of the purview of supplies taxable under GST.

On the specific exclusion of gifts upto 50000/- per employee from the scope of supply vide proviso to clause 2 of Schedule-I as a direct indication of taxability of transactions between employer and the employee even if made without consideration, they repeated that the Press Release ibid was a more surer indication of no taxability.

They specifically requested to take on record the following two items as their submission in support of their case: -

1. PRESS RELEASE dated 10.07.2017 adduced by the Appellant which mentions:

"It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST."

That, thus, the transport facility which has been provided to the employees under a contract, the same would be out of the scope of GST.

2. Reliance on a similar case decided by the Maharashtra Authority for Advance Ruling in the case of M/s Tata Motors Limited NO.GST-ARA-23/2019-20/B-46 Mumbai, dated 25/08/2020.

IV. DISCUSSION AND FINDING

We have carefully gone through the Grounds of Appeal.

It is observed that the Grounds of Appeal largely question the Ruling granted by the AAR as extraneous, vague and ambiguous. However since all the facts of the case and the application of legal provisions are being carefully examined and discussed afresh, no separate examination of the AAR's orderis being undertaken.

1. CORPOORATE SOCIAL RESPONSIBILITY

It is observed that the Appellant's re-submissions dated 23.03.2021 (supra) are broadly re-worded Grounds of Appeal except the hinted pleading made in these that transportation facility has been provided as a CSR (Corporate Social Responsibility) and non-observance of CSR invites heavy penalties under the Companies Act, 2013.

In this regard it is found that the activity of provisioning transport facility to the members from staff doesn't fall under CSR. Relevant Section 135 of the Companies Act 2013 reads as under: -

> ***135. Corporate Social Responsibility.***— *(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.*
>
> *(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.*
>
> *(3) The Corporate Social Responsibility Committee shall,—*
>
> ***(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;***
>
> *(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and*
>
> *(c) monitor the Corporate Social Responsibility Policy of the company from time to time.*
>
> *(4) The Board of every company referred to in sub-section (1) shall,—*
>
> *(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and*
>
> *(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.*

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section —average net profit shall be calculated in accordance with the provisions of section 198.

Thus the *Corporate Social Responsibility Policy* to be formulated by the relevant companies has to take up only from the activities specified in **Schedule VII.**

The Schedule VII is also reproduced below:

SCHEDULE VII

(*See* section 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies

Activities relating to:—

(i) eradicating extreme hunger and poverty;

(ii) promotion of education;

(iii) promoting gender equality and empowering women;

(iv) reducing child mortality and improving maternal health;

(v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;

(vi) ensuring environmental sustainability;

(vii) employment enhancing vocational skills;

(viii) social business projects;

(ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and

(x) such other matters as may be prescribed.

From the above it can be inferred that providing transportation facility to the staff members is not covered under the activities prescribed for CSR. The applicability of CSR to this case is thus ruled out.

2. FACTS IN THE CASE and APPLICATION OF LAW

The Appellant M/s Beumer India Pvt. Ltd., Gurugram is engaged in the business of manufacturing/trading of Intralogistics System. They have hired Motor Vehicles on contract basis from a Transport Agency. They are using said vehicles to provide transportation facility to employees in accordance with their human resource policy (HR Policy) at either a nominal cost where the vehicles are air conditioned, or free of cost in other cases.

FBP (FLEXI BENEFIT PLAN) and CLP (CAR LEASING POLICY)

The Appellant has provided the details of their Car Lease Policy under the Flexi Benefit Plan but have stated, "There is no correlation between *FBP (Flexi Benefit Plan)* Allowance and the *Transportation facility*. That, the FBP Allowance is an allowance given under *CLP (Car Lease Policy)* to those who opt to avail the CLP."

The details of Car Lease Policy (CLP) and the Flexi Benefit Plan (FBP) submitted by the Appellant provide that in terms of the CLP an eligible employee can select a Car falling in the price bracket and the monthly allowance entitled to him under the policy read with the Flexi Benefit Plan (FBP). The Car selected shall be leased-in by the Appellant M/s Beumer India Ltd. (BIL) and be made available to the employee against the deduction of his entitled FBP Allowance. The employee shall be entitled to purchase the car after the lease period which shall not exceed 60 months. Since the Employee is entitled to purchase the car at the end of the lease period, he may go for a shorter lease period and a higher monthly lease rental but the amount of lease rental must fall within his monthly entitlement under FBP.

Only the employees with WL-2 (Work Level - 2) and above can avail; WL-2 is entitled to Cars up to the value of Rs.8 Lakhs subject to individual's entitled ceiling under FBP. The Work Level - 1 (WL-1) employees aren't entitled to the CLP and cannot opt for the same.

The following are some of the salient features for the Car Lease Policy as submitted by the Appellant:

a. The lease rentals include GST.

b. The CLP states that the Flexi Allowance shall be reduced from the Special Allowances in the TFP (*Total Fixed Pay*).

c. The CLP States that employee cannot opt out until 48 months and one who does, shall pay foreclosure *penalty* and the GST applicable, as per the terms of the Car leasing company.

d. The employees not opting for CLP shall be paid Special Allowance mentioned in their compensation package.

e. The write-up on 'Transport Facilities' mentions that all BIL employees can opt and avail this policy except those who are having FBP Allowance under CLP and availing *Income Tax benefit,* (Viz. as applicable to Travelling Allowance/ Transport Allowance/ Conveyance Allowance – i.e. as a part of the salary) on the same.

The above features clearly indicate that the CLP is an option for the employee against a component namely *'Special Allowance'* of the compensation package in the contract of employment.

Appellant's submission that all BIL employees can opt and avail the Transport Facilities' (under consideration in the present Appeal)except those avail FBP Allowance under the CLP, appear to imply that the Transport Facility is an alternative component within the salary structure/ compensation package.

However, whereas CLP/FBP Allowance and Special Allowance are substitutive/ mutually exclusive components of the salary andonly one is available to the employee, the Transport facility is not available against any component of the salary of employees. The Appellant has not adduced any evidence that availment of the facility is vice any matching component available to non-opting employees. Rather, the first of the 'General Rules' of Transport Facilities states, *"This facility is for the employees based at Gurgaon Office who wish to use a bus service in the morning/ evening for Pick and Drop facility".*

For ready reference, the terms of Transport Facility are being reproduced here:

"TRANSPORT FACILITIES

Objectives

The objective of this policy is to work towards providing a safe, efficient and cost-effective transport facility to BIL employees.

Scope

All BIL corporate employees can avail and opt for this facility, except those who are having FBP Allowance in their salary structure under the Car Lease Policy and availing Income Tax benefits for the same.

General Rules

- *The facility is for the employees based at Gurgaon Office who wish to use a bus-service in the morning / evening for Pick and drop facility.*
- *Employees shall connect P&C or Admin Dept. to opt for the Bus Facility and they have to inform P&C and Admin department if wants to discontinue with the facility.*
- *Company shall provide the bus facility (Pick & Drop) to the employees asper pre-defined location in and around their place of residence.*
- *Buses shall ply for the general shift only, 8:30 to 5:00 pm. For late siting employees, another bus will be available at 7 pm to drop to the nearest Metro Station.*
- *There will be no bus service on weekends and holidays*

- *Employees are required to declare the exact point from where they will board the bus (this information should be synchronous with the present residential address as per the employee data base).*
- *All bus routes will be planned and laid out by the Admin Team so as to have the buses ply on the man / arterial routs in order to ensure coverage of the maximum area of the city.*
- *All the employees are expected to carry their ID cards while travelling in the company provided bus/ cab for safety and security reasons.*
- *Employees are not allowed to change the bus route while commuting to and from office for safety and security reasons. Any deviation will be treated as violation of company rules and company shall not be responsibility for the safety of the employees.*
- *Employees are requested to appreciate the travelling distance and start time of a bus / cab from the originating point and accordingly anticipate its timing of arrival. This would vary from place ti place and would help to reduce the waiting period for an employee.*

All employees must ensure a congenial and peaceful environment while travelling in the Bus."

As discussed supra, the CLP/FBP Allowance and Special Allowance are (mutually exclusive) components of salary structure/ compensation package. Whether the Car lease policy is a 3rd alternative component of the salary structure/ compensation package vice CLP-FBP/ Special Allowance stands replied by the Appellant who, in the re-submitted grounds of Appeal mentions that CLP has no correlation with Transport Facilities. Also from the terms of the Transport Facilities, it is clear that same is available in addition to Special Package, though not in addition to CLP-FBP.

Evidently, the facility is to facilitate employees' smooth commutation to and from the office, where despite the buses' fixed routes and waiting involved, it is more suitable to the employee than alternative means. This obviously is aimed to ensure smooth attendance of the employees residing at difficult routes and serves employer's own business motives. The same clearly is in furtherance of employer's business.

Further from the terms of the transportation facility, it is clear that same is conditional and is available against an option only. Thus it is observed that the facility is exclusive of the contractual obligation of the employer in the course of employment. Despite the same being provided as the company's HR policy but is obviously the company's policy motivated by business requirements. The same is evidently in furtherance of employer-Appellant's business.

3. APPLICATION OF LAW

Attention is drawn to Scchedule-1 to HGST/ CCGS Act 2017: -

"SCHEDULE I

See section 7

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. ....

2. Supply of goods or services or both between *related persons* or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an *employer to an employee* shall not be treated as supply of goods or services or both."

Employee and the Employer have been proclaimed as related persons for the purpose of CGST/SGST Act, vide Explanation (a) (iii)under Section 15. Thus, even a consideration is not necessary for taxing the service and the activity shall be treated as a *Supply* in terms of Schedule-I ibid.

The Appellant infers that since the transport facility has been provided to the employees under a contract the same would be out of the scope of GST.

It is submitted that an option exercised against an offer to avail a facility effectually enters the two parties into a contract as per the Indian Contract Act 1872. If the Appellant's inference is accepted, all kinds of services provided to employees by an employer viz. provided against any kind of contract, shall be out of GST.

This, obviously, is not the intention of the GST law. The Appellant is silent on the legal provisions and the intent to tax the services provided by the *'employer'* to a persons in exclusive relation of an *'employee'* with the employer. Nor it discusseshow the legal provisions are inapplicable to the instant case.

The Appellant's plea is that facility has been enabled as contractual transaction between the employer and the employee and same has been provided under their HR (Human Resource) policy therefore it falls under employer's contractual obligation towards the employees under the contract for employment. The Appellant relies upon CBIC's Press Release dated 10.07.2017 on this subject and states that the same amply clarifies such transactions as out of the purview of GST.

5. PRESS RELEASE dated 10.07.2017

During the hearing the Appellant's representativesvehemently pleaded that the transactions within employer-employee relationship have not been envisaged to be taxed under GST. They cited CBIC's press release dated 10.07.2017 and pleaded that the same squarely supports their stand.

The Press Release dated 10.07.2017is reproduced below

PRESS RELEASE

It is being reported that gifts and perquisites supplied by companies to their employees will be taxed in GST. Gifts upto a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs.50,000/- made without

consideration are subject to GST, when made in the course or furtherance of business.

The question arises as to what constitutes a gift. Gift has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit(ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre section 17 (5) (b) (ii). It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

It is observed that the Press Release very lucidly clarifies that transactions in the course of contractual obligation between employer and the employee are beyond the scope of GST. The same is very well reliable where employer-employee relation is in place and any service by the employer needs to be examined for leviability under GST. The same aptly provides that since service by an employee to the employer is outside the purview of GST, it follows that so will be the supply by the employer to the employee made in terms of the contract of employment.

However as observed supra, the transportation facility is exclusive of the contractual obligation of the employer in the course of employment.

Also, the circular mentioning that services of providing membership of a *'club'* or of a *'health or fitness centre'* to employees is not subject to GST when provided free of charge to *'all' the* employees, indicates that provisioning has to be under contractual agreement of employment.

6. WHETHERTRANSPORT FACCILITY IS ACOMPONENT OF SALARY

The Income under the Head *'Salaries'* has been defined under Section 15 of the Income Tax Act 1961, as amended up to the Finance Act 2021 dated 28.03.2021, as under:

"Salaries.

15. The following income shall be chargeable to income-tax under the head "Salaries"—

(*a*) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(*b*) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(*c*) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation 1.—For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

Explanation 2.—Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.

16. Deductions from salaries. - The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely:-

(i-a) a deduction of forty thousand rupees or the amount of the salary, whichever is less;

(ii) a deduction in respect of any allowance in the nature of an entertainment allowance specifically granted by an employer to the assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less;

(iii) a deduction of any sum paid by the assessee on account of a tax on employment within the meaning of clause (2) of article 276 of the Constitution, leviable by or under any law.

"Salary", "perquisite" and "profits in lieu of salary" defined.

17. For the purposes of sections 15 and 16 and of this section,—

(1)"salary" includes—

(*i*)wages;

(*ii*)any annuity or pension;

(*iii*)any gratuity;

(*iv*)any fees, commissions, **perquisites** or **profits** in lieu of or in addition to any salary or wages;

(*v*)any advance of salary; (*va*) any payment received by an employee in respect of any period of leave not availed of by him;

(vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule;

(*vii*) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and

(*viii*)the contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;

(2)"perquisite" includes—

(*i*) the value of rent-free accommodation provided to the assessee by his employer;

(*ii*) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

Explanation 1.—For the purposes of this sub-clause, concession in the matter of rent shall be deemed to have been provided if,—

(*a*) in a case where an unfurnished accommodation is provided by any employer other than the Central Government or any State Government and—

(*i*) the accommodation is owned by the employer, the value of the accommodation determined at the specified rate in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(*ii*) the accommodation is taken on lease or rent by the employer, the value of the accommodation being the actual amount of lease rental paid or payable by the employer or fifteen per cent of salary, whichever is lower, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(*b*) in a case where a furnished accommodation is provided by the Central Government or any State Government, the licence fee determined by the Central Government or any State Government in respect of the accommodation in accordance with the rules framed by such Government as increased by the value of furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the aggregate of the rent recoverable from, or payable by, the assessee and any charges paid or payable for the furniture and fixtures by the assessee;

(c) in a case where a furnished accommodation is provided by an employer other than the Central Government or any State Government, and-

(i) the accommodation is owned by the employer, the value of the accommodation determined under sub-clause (i) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation determined under sub-clause (ii) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(d) in a case where the accommodation is provided by the employer in a hotel (except where the assessee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another), the value of the accommodation determined at the rate of twenty-four per cent of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided, exceeds the rent recoverable from, or payable by, the assessee.

Explanation 2. - For the purposes of this sub-clause, value of furniture and fixture shall be ten per cent per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the assessee during the previous year.

Explanation 3.—For the purposes of this sub-clause, "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be, but does not include the following, namely:—

(*a*) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(b) employer's contribution to the provident fund account of the employee; (c) allowances which are exempted from the payment of tax;

(d) value of the perquisites specified in this clause;

(*e*) any payment or expenditure specifically excluded under the proviso to this clause.

Explanation 4.—For the purposes of this sub-clause, "specified rate" shall be—

(*i*) fifteen per cent of salary in cities having population exceeding twenty-five lakhs as per 2001 census;

(*ii*) ten per cent of salary in cities having population exceeding ten lakhs but not exceeding twenty-five lakhs as per 2001 census; and

(*iii*) seven and one-half per cent of salary in any other place;

(*iii*) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(a) by a company to an employee who is a director thereof;

(*b*) by a company to an employee being a person who has a substantial interest in the company;

(*c*) by any employer (including a company) to an employee to whom the provisions of paragraphs (*a*) and (*b*) of this sub clause do not apply and whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds fifty thousand rupees:

***

***Explanation.*—For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;**

(iiia) ***

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee;

(v) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund 12or a Deposit-linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or, as the case may be, section 6C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), to effect an assurance on the life of the assessee or to effect a contract for an annuity; ***

(vi) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

Explanation.—For the purposes of this sub-clause,—

(*a*) "specified security" means the securities as defined in clause (*h*) of section 215 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme;

(*b*) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(*c*) the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such security or shares;

(*d*) "fair market value" means the value determined in accordance with the method as may be prescribed;

(*e*) "option" means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;

(vii)the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees; and

(viii) the value of any other fringe benefit or amenity as may be prescribed Provided that nothing in this clause shall apply to,—

(*i*) the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer;

(*ii*) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family—

(*a*) in any hospital maintained by the Government or any local authority or any other hospital approved20 by the Government for the purposes of medical treatment of its employees;

(*b*) in respect of the prescribed diseases21 or ailments, in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines22 :

Provided that, in a case falling in sub-clause (*b*), the employee shall attach23 with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital;

(*iii*) any portion of the premium paid by an employer in relation to an employee, to effect or to keep in force an insurance on the health of such employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of clause (*ib*) of sub-section (1) of section 36;

(*iv*) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under subsection (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of section 80D;

(*v*) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than the treatment referred to in clauses (*i*) and (*ii*); so, however, that such sum does not exceed fifteen thousand rupees in the previous year;

(vi) any expenditure incurred by the employer on—

(*1*) medical treatment of the employee, or any member of the family of such employee, outside India;

(*2*) travel and stay abroad of the employee or any member of the family of such employee for medical treatment;

(*3*) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment, subject to the condition that—

(*A*) the expenditure on medical treatment and stay abroad shall be excluded from perquisite only to the extent permitted by the Reserve Bank of India; and

(*B*) the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income, as computed before including therein the said expenditure, does not exceed two lakh rupees;

(*vii*) any sum paid by the employer in respect of any expenditure actually incurred by the employee for any of the purpose specified in clause (*vi*) subject to the conditions specified in or under that clause :

Provided further that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.

Explanation.—For the purposes of clause (*2*),—

(*i*) "hospital" includes a dispensary or a clinic 30or a nursing home;

(*ii*) "family", in relation to an individual, shall have the same meaning as in clause (*5*) of section 10; and(*iii*) "gross total income" shall have the same meaning as in clause (*5*) of section 80B;

(*3*)"profits in lieu of salary" includes—

(*i*) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(*ii*) any payment (other than any payment referred to in clause (*10*), clause (*10A*) , clause (*10B*), clause (*11*), clause (*12*), clause (*13*) or clause (*13A*) of section 10), due to or received by an assessee from an employer or a former employer or from a provident or other fund * * *, to the extent to which it does not consist of contributions by the assessee or interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this sub-clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (*10D*) of section 10;

(*iii*)any amount due to or received, whether in lump sum or otherwise, by any assessee from any person—

(A) before his joining any employment with that person; or

(B) after cessation of his employment with that person."

From the above provisions of Income Tax law, it is clear that for charging Income Tax, *Salary* <u>*includes*</u> several *'Perquisites'* and *'Profits in lieu of Salary'*. These terms have also been defined ibid vide sub-Sections 17(2) and 17(3) of the Income Tax Act. None of these mentions *'Transportation facility'*. However, clause (*iii*) under sub-Section 17(2) includes the value of benefits and amenities under *Perquisites* to make these taxable under the Head *Salaries*. It reads, ***"(iii)*** *the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases— ..".*But noteworthy is the specific *exclusion* of the *'use of vehicle provided by company'* from the ambit of *Benefits* or *Amenities*. The Explanation to the clause reads, ***"Explanation.*—For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the**

assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause."

Thus, in Income Tax Law, the use of vehicles for commuting to and from office is not considered as a component of salary.

6. PERQUISITES/ OBLIGATION UNDERCONTRACT OF EMPLOYMENT

For an amenity or a perquisite to be an obligation under contract of employment, it should be available as a contractual obligation under the contract of employment. Also it has to be available to all the employees of a level. Where it is optional, an equivalent settled compensation should be available to non-opting employees e.g. the residential accommodation or the HRA (house rent allowance. In other words either the facility or an equivalent compensation as a pre-defined C2C/ cost to company has to be there, and as a part of the compensation package. This is not the case in respect of the Transport facility under consideration which doesn't correspond to any matching compensation for non-opting employees.

7. ADVANCE RULING IN TATA MOTORS LTD.

Appellant has relied on a similar case decided by the Maharashtra Authority for Advance Ruling in the case of M/s Tata Motors Limited NO.GST-ARA- 23/2019-20/B-46 Mumbai, dated 25/08/2020.

However, it is observed that the order of the Maharashtra AAR is on different facts and it will be incorrect to apply the same to the instant case

There were two questions raised for Advance Ruling in the Tata Motors case viz.

i. Whether ITC shall be admissible in respect of motor vehicles of authorized seating capacity of above 13 persons (hired and) used, for provisioning of transport facility to the employees free of cost, or in respect of AC vehicles, at nominal cost;

and

ii. Whether such a facility shall be liable to GST.

The AAR Maharashtra ruled that ITC shall be admissible but also ruled that no GST shall be applicable on the transport facility. The logic the AAR gave was that M/s. Tata Motors Ltd. is a recipient of the service from the provider of vehicles but not a provider of service to the employees.

8. FINDINGS

Thus the legal provisions, we find, are very clear.

As discussed supra, the clause 2. of Schedule-I (of CGST/SGST Acts) brings a supply between related persons, even if made without consideration, under the purview of the GST. The*Explanation*(iii) to Section 15of CGST/SGST

Acts, proclaims Employee and the Employer as related persons for the purpose of these Acts.

The optional Transport Facility for employees with no equivalent provisioning for non-opting employees, is exclusive of the contractual obligation of the employer under the contract for employment. It's been provided to suit his business requirements and is in furtherance to his business. The same would be taxable under relevant provisions of the CGST and HGST Acts.

GIFT

Sub-Section (2) of Section 56 of Income Tax Act 1961 taxes sums received under the Head *'Income from Other Sources'*. Clause *(vii)(a)* of sub-Section (2) of Section 56 includes the sum of money where it exceeds Rupees 50000/- received by an *Individual* or an *HUF* without *'consideration'* as the income from other sources, for taxing under the act. The clause *(vii)(c)* of the sub-Section (2) of Section 56 includes fair market value of a movable property where it exceeds Rupees 50000/- received by an *Individual* or an *HUF* without *'consideration'* as the income from other sources, for taxing under the act. Thus it is clear that a sum of money received without consideration is akin to moveable property received as gift/ without consideration.

We find that a gift of the value of Rs.50,000/- given by the employer to *an employee* during a financial year is not a taxable supply, in terms of Clause 2 of Schedule-I ibid, to the GST Acts. The clause reads as under:

> *"2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:*
>
> *Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both."*

RULING

In view of the above discussions and findings, we find that the transactions executed in the course of contractual obligation of an agreement of employment are beyond the scope of GST as clarified in the Press Release dated 10.07.2017, of CBIC.

We hold that provisioning of transport facility provided by the Appellant is exclusive of the contractual obligation of the employer in the course of employment. The same shall be liable to GST, on a value that exceeds the total gift value up to Rs.50000/- given by the Appellant to an employee availing this facility in a financial year.

(Shekhar Vidyarthi)
Member (SGST)

(Rajesh Sodhi)
Member (CGST)

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2. Assistant Commissioner, CGST, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).