

 सत्यमेव जयते	<b>APPELLATE AUTHORITY FOR ADVANCE RULING, RAJASTHAN</b> <b>GOODS AND SERVICES TAX</b> NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : <a href="mailto:aaarjpr@gmail.com">aaarjpr@gmail.com</a>	
---	---	---

**ORDER NO. 03/2024-25 DATED 01.07.2024**

Before the AAAR comprising of:

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)



Name and address of the Appellants	1. The Principal Commissioner, CGST & CX/ST, Jodhpur. G-105, Road No. 5, Behind AIIMS Hospital, New Industrial Area, Basni, Near Diesel Shed, Jodhpur – 342003. 2. The Deputy Commissioner, State Tax Department, Circle Suratgarh Ward- I, Zone Ganganagar, Kar Bhawan, Near Sadar Police Station, Hanumangarh Road, Suratgarh – 335804.
Name and Address of the Respondent	Shri Sunil Giri, Proprietor of M/s Giri Transport Company, near Swami Dharmshala, Ward 12, Suratgarh-335804
GSTIN/ UID of the Respondent	08CRBPG5309N1ZM
Issues under Appeal	Filed under Section 97(2)(c) determination of time and value of supply of goods or services or both;
Date of Personal Hearing	07.03.2024 and 07.05.2024
Present for the Appellants	For Appellant No. 2 Sh. Rajpal Singh Beniwal, Joint Commissioner, State Tax on 07.03.2024 and 07.05.2024 and Sh. Bhim Singh, Assistant Commissioner, State Tax, Suratgarh on 07.05.2024
Present for the Respondent	Sh. Sanjay Jhanwar, Sr Advocate, Sh. Rahul Lakhwani, Adv and Sh. Ashish Sharma (authorized representatives of the Respondent).
Details of Appeals	Appeal No. RAJ/AAAR/APP/04/2022-23 dt 12.08.2022 and 14.10.2022 against Advance Ruling No. RAJ/AAR/2022-23/08 dated 16.06.2022



(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are *pari-materia* barring a few exceptions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 should also be read as a reference to corresponding provisions of Rajasthan GST Act, 2017.

The present appeal has been filed under Section 100 of the Central Goods & Service Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods & Services Tax Act, 2017 (hereinafter also referred to as 'the RGST Act') by the Appellants against AAR, Rajasthan Ruling Order No. RAJ/AAR/2022-23/08 dated 16.06.2022. The Principal Commissioner, CGST Commissionerate, Jodhpur filed an appeal on 12.08.2022 and also submitted a request to condone the delay which is very meagre. As per them, the order of AAR was received by them on 11.08.2022. Subsequently, the Deputy Commissioner, State Tax Department, Circle, Ward - Suratgarh also filed an appeal before this authority on 14.10.2022 as admittedly the AAR Order dated 16.06.2022 was received by them only on 15.09.2022. They also requested for condonation of delay of 30 days as per proviso to sub-section (2) of Section 100 of CGST Act, 2017.

### **BRIEF FACTS OF THE CASE**

1. Shri Sunil Giri, Proprietor of M/s Giri Transport Company (hereinafter referred to as 'Respondent') having GSTIN - 08CRBPG5309N1ZM, a Goods Transport Agency (GTA) was about to enter into contract with their customer for providing service of transportation of goods by road, therefore, filed an application dated 09.03.2022 for seeking Advance Ruling under Section 97(2)(c) of CGST/SGST Act, 2017 for determination of time and value of supply of goods or service or both.
2. The Respondent had sought Advance Ruling in respect of following question of law:  
*"Whether the value of diesel provided by the customer (service recipient) to the trucks is to be added to the freight charged by the Applicant for the purposes of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') & the Rajasthan Goods and Services Tax Act ('RGST Act, 2017')?"*
3. According to the contract between the Respondent and their customer, diesel necessary for transporting goods will be provided by the customer (service recipient) free of charge and used exclusively for the transportation service. The freight cost is determined without including diesel expenses as agreed upon in the contract. The Respondent, a Goods Transport Agency (GTA) shall not responsible for procuring or paying for the diesel filled in the trucks by the service recipient, which is solely for the designated transportation trips.



4. As per the contract, the Respondent (GTA) will be required to send the truck to the customer's factory. After loading of goods, diesel required, calculated on the basis of load and distance for the transportation of such consignment to the destination will be filled in the fuel tank of the truck.

5. Upon completing the transport service, the Respondent (GTA) will raise the invoice charging the freight charge specified in the consignment note excluding the value of diesel provided at no cost by the customer. The invoice will contain detail of the consignment notes, serving as acceptance of the transportation contract at the agreed rate. The Respondent (GTA) will not record the diesel provided by the customer in their accounts.

6. The Authority of Advance Ruling, Rajasthan ('AAR') vide Advance Ruling No. RAJ/AAR/2022-23/08 dated 16th June, 2022 pronounced that *"the value of diesel filled free of cost (FOC) by the service recipient is not includable in the value of the GTA service proposed to be provided by the Applicant (GTA) in the facts and circumstances of the present application subject to conditions as mentioned in draft Transport Service Agreement/ contract incorporated in the body of this decision/ruling."*

7. On being aggrieved with the Order dated 16.06.2022 passed by the AAR, Rajasthan, the Principal Commissioner, CGST Commissionerate Jodhpur filed an appeal before this authority on 12.08.2022 stating therein that due to late communication of AAR Order dated 16.06.2022 to them on 11.08.2022, they were unable to file the appeal against the above Order within a period of thirty days from the date of communication of the Order. They have also stated that the delay in filing of appeal is very meagre and should be condoned in view of the proviso to Section 100 (2) of the CGST Act, 2017. Subsequently, the Deputy Commissioner, State Tax Department, Suratgarh are also in appeal before us against the impugned AAR Order on 14.10.2022 showing therein date of communication of AAR Order as 15.09.2022. They also requested to extend the due date of filing of appeal by 30 days as per proviso to the Section 100(2) of the CGST Act, 2017. Grounds of appeal for both the appeals are the same, which are reproduced as below:-

**8. The appeal has been filed on the following Grounds by both the Appellants:**

- 8.1 The Appellants have contended that as per Section 15(1) of CGST Act, 2017, the value of a supply of goods or services or both shall be the transaction value, where the supplier and the recipient are not related and the price is the sole consideration for the supply.
- 8.2 The Appellants contended that the AAR in their aforesaid Order held that the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. However, in this case, the price cannot be termed as sole consideration for services as Diesel is being supplied free of cost by the recipient. Hence transaction value as per agreement cannot be considered as sole



consideration and condition as per Section 15(1) of CGST Act, 2017 is not fulfilled.

- 8.3 The Appellants pleaded that the AAR overlooked the definition of consideration as mentioned under Section 2(31) of the CGST ACT, 2017, which 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 Central Government or State Government;

(b) The monetary value of any act or forbearance, 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 State Government

- 8.4 The Appellants asserted that the provision of GTA envisage providing a vehicle in running condition with requisite fuel being a mandatory component, without which the service of GTA cannot be 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. They submitted that even if the diesel is provided by the service recipient is Free of Cost, the value of the same will have to be considered as additional consideration flowing from the recipient to the supplier. Diesel provided on Free of Cost basis under terms of the contract is purely consideration as per Section 2(31) of the CGST ACT, 2017.

- 8.5 The Appellants submitted that as per Section 15(2)(b) of CGST Act, 2017, the value of supply shall include “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”;

Authority of Advance Ruling has mis-interpreted the phrase “liable to pay in relation to such supply”. In case of GTA, fuel is main inward supply to execute outward supply. Irrespective of the fact that the cost is being borne by supplier or recipient, the onus of getting inward supply always lies with the supplier.

- 8.6 The Appellants averred that in normal course, the fuel expenses were to be borne by the Respondent but they made an agreement in which recipient would supply fuel for free. This does not spare the supplier from the liability of payment of inward supply i.e diesel in the light of statutory provision relating to determination of value of taxable supply contained under GST Act.
- 8.7 The Appellants contended that Section 15(4) of CGST Act 2017 stipulates that “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."*

Accordingly, Rule 27 to 31 of CGST Rules, 2017 prescribed the valuation in CGST in such circumstances.

8.8 The Appellants contended that Rule 27 of CGST Rules, 2017 states that value of supply of goods or services where the consideration is not wholly in money, the value of the supply shall:

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

Rule 27(b) is applicable in the instant case and valuation of supply/ services may be taken as sum of all considerations including cost of diesel which is supplied free of cost by recipient of services.

8.9 The Appellants contended that as per Section 7 CGST Act, 2017, all forms of supply of services are considered as "supply". It is also seen that Schedule I of the CGST Act provides levying GST on supplies made even without consideration. The AAR in their aforesaid Order stated on the basis of contention of Respondent that the proposed transaction is not being planned between related parties and therefore also Schedule I of the CGST Act is not applicable. The findings of AAR in the aforesaid case are incorrect.

8.10 The Appellants claimed that the findings of AAR in the aforesaid case in respect of applicability of CBIC Circular No. 47/21/2018 - GST dated 08.06.2018 are incorrect and not acceptable due to following reasons:

(i) 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.

(ii) further, the dies etc. are not major input to execute outward supplies. The recipient of supply may at any time change supplier and send his dies/ moulds to another supplier. In the instant case, the issue is different and thus the circular is not applicable to this case.

(iii) the citation relied upon in the case of M/s Nash Industries (I) Pvt Ltd. 2019 (3) TMI 435- Appellate Authority for Advance Ruling, Karnataka and in the case of M/s Lear Automotive India Pvt. Ltd. 2018(12) TMI 766, AAR Maharashtra, are not applicable in the instant case on the basis of above terms as these are based on the said CBIC Circular No. 47/21/2018-GST dated 08.06.2018.



8.11 The Appellants contended that the AAR has relied upon many judgments which had been pronounced in context of service tax and therefore, are not applicable in context of GST law as:

- (i) In the case of Heligo Charters Pvt. Ltd, the dispute was whether the taxpayer is providing 'Business Support Service' or 'Supply of tangible goods for use without transfer of right of possession and effective control' hence has no bearing to the present case.
  - (ii) In the case of M/s R.K. Transport Company v. CCE [2020 (11) TMI 34] CESTAT New Delhi, case laws pertain to the erstwhile service tax regime, i.e. prior to April, 2012 and not applicable in this case.
  - (iii) The case law quoted on the basis of erstwhile service tax law is not applicable in the instant case as the provision in Section 15(2)(b) of the CGST Act, 2017 are different from the provisions governing determination of value of taxable service contained under 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. Section 15(2)(b) of the CGST Act, 2017 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.
- Hon'ble Supreme Court in their judgment in the case of Commissioner of Service Tax v/s M/s Bhayana Builders (P) Ltd had reached the conclusion in favor of the taxpayer in light of the provisions of Section 67 of the Finance Act as it existed at the relevant time and therefore is not applicable in the instant case.
- (iv) In the case of Karamjeet Singh, there was no dispute regarding addition of cost of FOC diesel etc.,
  - (v) 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 is apposite in the matter. The case was related to event management service where the taxpayer 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.

8.12 The Appellants contended that the findings of the Authority of Advance Ruling, Chhattisgarh in their Order No. STC/AAR/07/2020 Raipur dated



04/01/2021 were that cost of diesel to be filled FOC by the service recipient in the engaged chartered (dedicated) vehicles (provided by the applicant) as per the proposed draft agreement would form part of value of supply of service and GST would also be leviable on the this value, under GTA service. This judgment is also squarely applicable in this case.

- 8.13 Further, the Appellants contended that an appeal was filed against this Order of AAR, Chhattisgarh dated 26.03.2019. The two members of the Appellate Authority had difference in their views and therefore, no final Order could be issued by the Appellate Authority for Advance Ruling of Chhattisgarh.
- 8.14 The Appellants contended that the impugned Order passed by Advance Ruling Authority, Rajasthan which is prima facie, contrary to legal provisions has serious implications from view point of determination of value of taxable service as this procedure of intentionally splitting up the GTA service contract is largely used in almost all Cement Manufacturers in the country as well as various other service sectors.
- 8.15 The Appellants contended that the AAR in their Ruling stated that the issue is also revenue neutral in as much as even if the value of the free of cost diesel was required to be included in the value of GTA service then also the service recipient of the Respondent would be in a position to take input tax credit of the GST charged on such an invoice raised by the Respondent.

The AAR findings in the context is beyond the concept of taxation as each and every B2B transaction, service receivers are taking input tax credit of the GST charged on such an invoice raised by the suppliers; and if it should be treated as revenue neutral then there should be no taxation on B2B supply and it will defeat the very purpose of taxation law. Taxation on supply and input tax credit both are separate things and governed by different set of Act/Rules of GST.

### **PERSONAL HEARING**

9. A personal hearing was held in the matter on 07.03.2024. The Joint Commissioner (State Tax) as Appellant No. 2 attended the hearing and iterated their submissions made in the appeal dated 14.10.2022. They also supplied additional written submissions dated 06.03.2024. These are found part of the grounds of appeal already on record. The Respondent however did not appear for hearing and vide their email dated 07.03.2024 requested for an adjournment of 8 weeks in order to secure legal assistance in the matter. In the said letter, the Respondent also furnished Hon'ble Jodhpur High Court Order dated 22.09.2022 in which the Hon'ble High Court has held that if any preliminary objections are filed then the disposal of same should precede the actual disposal of the appeal. The adjournment was granted to the Respondent and personal hearing was rescheduled for 27.03.2024. Further, the records of the hearing were also communicated to the Respondent. The Respondent, vide email dated 16.03.2024 sought additional time to secure legal representation for filing preliminary objection. Additionally, they requested copies of specific documents,



including correspondence with the Appellant No. 1, the Principal Commissioner of CGST Jodhpur. They also referred to two of their communiqués vide letters dated 29.09.2022 and 27.10.2022 and that no action was taken in respect of these letters. It is noted that Respondent's letters dated 29.09.2022 and 27.10.2022 were not found received in this office.

9.1 The Respondent vide their letter dated 08.03.2024, received via email dated 16.03.2024, expressed concern about the considerable delay in the appeal process, which commenced almost one and a half years after its initial filing and after the Respondent's request for seeking time to file preliminary objections vide letter dated 29.09.2022 (after which no communication was received by them). They also sought clarification on the legal provisions enabling the revival or current pursuit of the appeal, considering its lapse due to time limitations.

9.2 Additionally, the Respondent alleged that during the personal hearing on 07.03.2024, the Joint Commissioner, who appeared for hearing, solely focused on the merits of the case and neglected to address the issue of maintainability of the appeal. The respondent argued that the Deputy Commissioner, State Tax, Suratgarh Circle, who served as the jurisdictional officer at the time of the ruling by the AAR, furnished comments that contradicted the submissions furnished by them during the personal hearing dated 07.03.2024.

9.3 In response to the Respondent's request, they were intimated vide this office letter dated 19.04.2024 that neither the letters mentioned by them had been received by this office, nor were any preliminary objections filed against the appeal. They were granted the adjournment and the personal hearing was rescheduled to be held on 16.04.2024.

9.4 The Respondent vide letter dated 01.04.2024, received via email on 09.04.2024, expressed their grievance that the documents requested vide their email dated 16.03.2024 were not provided to them. They added that the documents were of utmost importance in order to file exhaustive submissions in respect of the appeals. They also stated that they have submitted preliminary objections regarding both the appeals. In this letter, the Respondent has enclosed the letters dated 29.09.2022 and 27.10.2022 purportedly sent by them earlier.

The Respondent further contended in the letter that they had already raised preliminary objections in the following ways:

9.4.1 Through their letter dated 29.08.2022 the respondent claim to have submitted that the appeal filed by CGST was defective, inadmissible and filed without following procedure. They contend that no response to this letter was received by them due to which they had to take legal recourse and file the Writ Petition before Hon'ble High Court Rajasthan.

It is observed that the aforementioned letter of the respondent was received in this office on 02.09.2022 in which they had simply informed that they could not see the appeal on the common portal, and sought a period of four weeks to file



preliminary objections. Vide this office letter dated 21.09.2022, they were communicated that the extension has been granted.

9.4.2 Secondly the respondent contended as under

*“the Order of High Court dated 22nd Sept. 22 was passed in presence of Standing Counsel of the Department and the pleadings made about the appeal of Revenue Authority being non-est for reasons of being time barred and being nonconformity with law, was also explained to the Hon'ble Court in the presence of Standing Counsel of Department. Thus, it is the second instance by which grounds of preliminary objections were let known through the standing Counsel of the Department.”*

9.4.3 Further vide letters dated 29.09.22 and 27.10.22 the respondent allegedly intimated that the appeals filed by CGST and SGST are both time barred and filed without following procedure. It is observed that both letters were never received in this office.

9.4.4 The contents of their letter dated 08.03.24 received in this office via email dated 16.03.24 are the detailed explanations and grounds of preliminary objections of the Respondent. The Respondent however was apprehensive that documents prayed for were not supplied to them by the department, owing to which they could not conclude their submissions.

9.4.5 The Respondent concluded the letter requesting for the documents/correspondences again in order to enable them to comply with the Hon'ble High Court Order.

9.5 The personal hearing held on 07.05.2024 was attended by the Joint Commissioner and the Assistant Commissioner, State Tax, Suratgarh as Appellant No. 2 and Sh. Sanjay Jhanwar, Sr Advocate, Sh. Rahul Lakhwani, Advocate and Sh. Ashish Sharma (authorized representatives of the Respondent). In the personal hearing, the Assistant Commissioner, State Tax iterated the written submissions already made by them and further relied upon an Order dated 17.10.2023 of the Hon'ble Chhattisgarh High Court (writ petition No. 117/2022) in the case of M/s Shri Jeet Transport v/s UOI and others in a similar issue wherein the diesel cost has been held to be includible in the taxable value.

9.6 The counsels for the Respondent supplied two written submissions dated 07.05.2024 (one each for the Centre and the State). They submitted that they had four preliminary objections for appeal filed by CGST and four for appeal filed by SGST. Three of the objections were common for both the appeals and are reproduced as below:

1. That the time limit for passing order u/s 101 of the CGST Act 2017 stands expired.
2. That the Appeal has been filed without following the procedure as prescribed by law.
3. That the Appeal filed by the Appellant Department is time barred.



One objection each was specific to the CGST appeal and for SGST appeal. The two preliminary objections are reproduced as below in that order:

4. That the Appellant (Principal Commissioner, CGST Jodhpur) is not a proper authority to file an Appeal u/s 100 of the CGST Act.
5. That Appellant (Deputy Commissioner, State Tax, Suratgarh) cannot revisit the stand taken before the AAR.

Thus effectively we have five grounds of appeal.

10. Further, the detailed written contentions elaborating the above said objections, furnished by the Respondent are as follows:

1. That the Respondent were served two notices by the Joint Commissioner, AAAR, one was dated 18.08.2022 and the other 17.10.2022. Both notices had enclosed a copy of purported appeal, filed in hard copy, filed by the Appellant No. 1 and Appellant No. 2 respectively against the AAR order dated 16.06.2022. The Respondent was apprehensive that the notices were sent after expiry of a period of over 70 days and 120 days from the dated of the impugned order respectively.
2. That the Respondent averred that they had already filed preliminary objections to the appeal filed by the Appellant through communication dated 29.08.2022, 29.09.2022, 27.10.2022, 08.03.2023 and further letters on different dates. That *vide* aforesaid communications, they have also requested for certain information/ documents, which were not provided till date. The Respondent asserted that preliminary objection is subject to information/ documents to be provided by this office.
11. The Respondent furnished following preliminary objections with respect to the appeals:

**I. THAT THE TIME LIMIT FOR PASSING ORDER u/s 101 OF CGST ACT, 2017 STAND EXPIRED.**

- A. The Respondent argued that the time limit of passing order as per Section 100(2) of CGST Act. 2017 is ninety days from the date of filing of the appeal. Relevant extract of the same is reproduced below for ready reference –

101. Orders of Appellate Authority.—

*(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.*

*(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under Section 100 or a reference under sub-section (5) of Section 98*



The Respondent argued that the appeals were filed by Appellants No.1 and 2 on 12.08.2022 and 14.10.2022 respectively, and over 1.5 years have passed since then. They asserted that the deadline for issuing an order under Section 101(2) of the CGST Act has expired, rendering the appeal orders ineligible, thus affirming the finality of the Advance Ruling Order.

## **II. THAT THE APPEALS FILED BY THE APPELLANT DEPARTMENTS ARE TIME BARRED.**

- A. The Respondent submitted that the Appellant No.1 filed the appeal on 12.08.2022 in respect of impugned order dated 16.06.2022 while Appellant No. 2 filed the appeal on 14.10.2022
- B. The Respondent contended that Section 100(2) provides that the appeal before the Appellate Authority of Advance Ruling has to be filed within a period of 30 days from the date of communication of order to the Appellant. They added that it also provides that the time limit can be further extended to another 30 days on sufficient cause being shown. Subsection (2) of Section 100 of CGST Act, 2017 provides as follows –

100. Appeal to Appellate Authority.—

(2) Every appeal under this Section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

*Provided that the Appellate Authority may, if it is satisfied that the Appellants was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.*

- C. The Respondent argued that the Appellants 1 and 2 to circumvent the limitation have mentioned the date of communication of impugned order as 11.08.2022 and 15.09.2022 in the appeal memos respectively. To substantiate the same the Respondent, procured from the Registrar of Advance Ruling Authority, the postal details in respect of the impugned order as to how and when was it communicated to the Appellants. As per the dispatch details shared with the Respondent, the date of receipt of order by the Appellants 1 and 2 as appearing on the Indian Post website is 23.06.2022 and 28.06.2022 respectively.
- D. The Respondent further argued that the Authority of Advance Ruling uploaded the order dated 16.06.2022 on the GST Portal and date of communication of order as appearing on the GST Portal is 17.06.2022. They averred that the impugned order was also communicated to the Appellants through GSTN portal which is valid mode of communication of the order. Hence the appeals filed on 12.08.2022 and 14.10.2022 deserve to be rejected being barred by limitation.



- E. The Respondent referred to sub-section 3 of Section 169 of CGST Act, 2017 which provides as under –

169. Service of notice in certain circumstances.—

*(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.*

The Respondent argued that the Appellants till date have not proved the contrary, that the impugned order has been received after the expiry of the period normally taken by such post in transit. The Respondent therefore has a strong opinion that in pursuance to Section 169(3) of the CGST Act, the order had been communicated to the Appellants. They contended that the dates mentioned in the appeal memo as the dates of receipt by the Appellants are incorrect and the appeal filed by the Appellants being barred by limitation is liable to be rejected.

### **III. THAT THE APPEALS WERE FILED WITHOUT FOLLOWING THE PROCEDURE AS PRESCRIBED UNDER THE LAW.**

- A. The Respondent submitted that as per Section 100 (3) appeal shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

- B. They referred to Rule 106 of the CGST Rules, 2017 which reads as under: -

Rule 106. Form and manner of appeal to the Appellate Authority for Advance Ruling:-

*(1) An appeal against the Advance Ruling issued under sub- Section (6) of Section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in Section 49.*

*(2) An appeal against the Advance Ruling issued under sub- Section (6) of Section 98 shall be made by the concerned officer or the jurisdictional officer referred to in Section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.*

*(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,-*

*(a) in the case of the concerned officer or jurisdictional officer, by an officer authorized in writing by such officer; and*

*(b) in the case of an applicant, in the manner specified in rule 26."*

- C. The Respondent submitted that as per the provisions of Section 100 (3) of the CGST Act, 2017 read with Rule 106 (2) of the CGST Rules, 2017, the appeal must be filed by the concerned officer, or the jurisdictional officer on the common portal in FORM GST ARA-03. Therefore, the appeals filed in hard copy, contravene Section 100(3) of the CGST Act, 2017 and Rule 106(2) of the



CGST Rules, 2017. Hence, they should be rejected for not adhering to the prescribed procedure.

**IV. THAT THE APPELLANT NO. 1 IS NOT A PROPER AUTHORITY TO FILE AN APPEAL u/s 100 OF THE CGST ACT.**

- A. The Respondent submitted that the Appellant No.1 filed the appeal against the impugned order on 12.08.2022 and another appeal was filed by jurisdiction officer (Appellant No. 2) against the same order on 14.10.2022 by mentioning the date of receipt of impugned order as 15.09.2022. The Respondent argued that as per the provisions of Section 100 of CGST Act, 2017 read with Rule 106 of CGST Rules, 2017 (not reproduced again for the sake of brevity) it is evident that appeal before the Appellate Authority can be filed either by the concerned officer or the jurisdictional officer.
- B. They added that the term 'Concerned Officer' is not explicitly defined in GST Law. Section 98 of the CGST Act, 2017, outlining the procedure for handling applications, is referred to ascertain the meaning of this term –

98. Procedure on receipt of application—

*(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:*

*Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.*

*(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application:*

*Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:*

*Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:*

*Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.*

*(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.*

*(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorized representative, pronounce its Advance Ruling on the question specified in the application.*

*(5) Where the members of the Authority differ on any question on which the Advance Ruling is sought, they shall state the point or points on which they differ*



and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its Advance Ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the Advance Ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

The Respondent contended that the State Authority assumed the role of 'concerned officer' under Section 98 of the CGST Act during proceedings of the AAR. Consequently, State Authority being the jurisdictional officer was sent the copy of the impugned order. The Respondent argued that in the present case jurisdictional officer i.e. State Authority is only the 'Concerned Officer' for the purpose of Section 100 of GST Act. Hence the right to file an appeal as per Section 100(1) of the Act rests only with them. Therefore, the Respondent is convinced that the appeal filed by the Appellant No. 1 (Principal Commissioner, CGST Commissionerate Jodhpur) presuming to be 'concerned officer' is in violation of Section 100(1) of the CGST Act is liable to be rejected.

**V. THAT APPELLANT CANNOT REVISIT STAND TAKEN BEFORE THE AUTHORITY OF ADVANCE RULING.**

- A. The Respondent argued that, as per Section 98(4) of the CGST Act, 2017, the AAR granted the Appellant No. 2, the 'concerned officer', an opportunity to present their stance on the matter. Appellant No. 2 (Deputy Commissioner State Tax, Suratgarh) submitted in their comments that GST isn't applicable to Free of Cost (FOC) materials provided by the service recipient, as per contractual terms. This submission was duly recorded in the ruling issued by the Authority of Advance Ruling. The relevant extract is reproduced as below:

**D. COMMENTS OF THE JURISDICTIONAL OFFICER**

The germane part of the Comments received from the Deputy Commissioner, State Tax, Circle Suratgarh vide letter dated 04.06.2022 is as under:

5. In Annexure 'B' he has submitted that :

*In terms of the contract proposed being executed, diesel is to be consumed in providing the service of transportation of the goods, is in the scope of customer and for is provided on free of cost basis. The said diesel required for the trip will be filled in the truck deployed by the Applicant for the transportation, the parties have clear understanding that the said diesel shall be used/consumed exclusively for the transportation of goods belonging to the customer and that the property in the diesel will not pass to the Applicant. The freight for the transportation is fixed based on the scope of transportation contract, which excludes diesel. In the light of the above arrangement, while undertaking the activity of transportation of the vendor's goods under this agreement, the truck placed by applicant would be filled up with the diesel for the said trip. The said agreement is always for transportation to specific destinations only. The Applicant would be neither required to nor would be liable to pay for the diesel that would be filled in the trucks by the said customer.*



*As far as the Applicant is concerned the Applicant will be required to send the trucks to the customer's destination. The trucks will report to the factory and after loading of goods, diesel calculated on the basis of load and distance, for the transportation of the said consignment to the destination, will be filled in the fuel tank of the truck.*

*6. On examination of the application, the applicable legal provisions of CGST Act are produced hereunder.*

*Valuation under Section 15 CGST Act does not include the present Transaction Section 15 (1) of CGST Act clearly provides that price actually paid or payable for supply of goods/ services is to be the value of supply. Further, Section 15 (2)(b) only includes the amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient and not included in the price actually paid or payable. Hence this sub-section only applies when the contractual liability is that of the supplier but the same stands paid by the recipient. Section 15(2)(b) clearly provides that "any amount that the supplier is liable to pay" (in this case service recipient is not at all liable to pay for diesel) "but has been incurred by the recipient of supply" can only be added. (Since GTA is not liable for the diesel, it cannot be added in value of GTA service).*

*Authority of Advance Ruling, Chhattisgarh in case of Navedit Agarwal [STC/AAR/10/2018) held that the GST is chargeable on the value of diesel provided by the service recipient to GTA by raising separate bills. It is submitted that the said ruling will not apply to the case under examination as because in that (said) case, consideration was chargeable for the diesel provided by the service recipient by raising debit note on the GTA service provider (as is also expressively mentioned in para 3 (iv) of the order), whereas in the instant case, no consideration will be charged by the service recipient and hence no GST is chargeable thereon. The ruling on Navedit Agarwal being on opposite facts is not relevant for deciding the case of the applicant.*

***Thus, from the above provisions, in our opinion, GST is not leviable on Free of Cost (FOC) material provided by service recipient to applicant when such goods are in the scope of service recipient as per contractual terms.***

The Respondent averred that from the perusal of above reproduced comments of the Appellant No. 2 submitted before the AAR it is evident that the jurisdiction/concerned officer i.e. Appellant No. 2 agreed that in the present case, the value of material provided free of cost by the recipient would not be included in the value of supply as per the provisions of Section 15 of CGST Act, 2017. The Respondent submitted that the order passed by AAR, Rajasthan is an 'Consensus ad Ordinem' and Appellant is bound by the 'Principle of Estoppel'. The Appellant in the garb of appeal remedy is attempting to revisit the stand taken before the authority of Advance Ruling which is bad in law and liable to be rejected.

12. In light of the facts and submissions made hereinabove, the Respondent requested that the AAAR may decide the preliminary objections raised vide different communications made by the Respondent. Further they prayed that the following recourse may be taken:

- i. Not to proceed with the Appeal as the time limit for passing the order as per Section 101 of the CGST Act has expired and declare the ruling given by the Authority of Advance Ruling vide order dated 16.06.2022 as final; and or
- ii. Reject the appeal declaring it to be barred by limitation; and/or



- iii. Dismiss the appeal being filed without following the procedure prescribed under the law; and
- iv. If proceeding further in the matter on merits, then a sufficient opportunity to submit reply on merits may please be provided.

13. The Joint Commissioner, State Tax, Suratgarh vide letter dated 08.05.2024 made an additional submission in continuation of those made during the Personal Hearing held on 07.05.2024. During the course of hearing, representative of the respondent has raised a contention that the appellant (Deputy Commissioner, SGST, Circle Suratgarh) cannot revisit the stand taken before the AAR to the effect that GST is not leviable on free of cost (FOC) materials supplied by service recipient to applicant when such goods are in the scope of service recipient as per contractual terms.

In this regard, the Joint Commissioner, State Tax, Suratgarh submitted that the stand taken by the Deputy Commissioner, State Tax, Circle Suratgarh, had implication for the whole state of Rajasthan. As such approval of higher officers was required before filing the comments to AAR. Later on, the matter came to notice of higher officers and it was felt that the stand taken by the Deputy Commissioner, circle Suratgarh, SGST was not correct, legal and proper. Consequently, it was decided to file appeal in the matter and appeal was filed accordingly.

14. With regard to contention of the Respondent that appeals are time barred. Vide letters dated 31.05.2024, the details of receipt of the impugned Order were enquired from both the Appellants viz the Commissioner, CGST & CX/ST, Jodhpur and the Joint Commissioner, State Tax, Suratgarh.

The Appellant No. 1 vide their letter dated 12.06.2024 informed that their office had received a letter from the Principal Commissioner, CGST Audit, Jaipur on 11.08.2022 enclosing a copy of the subject order, requesting them to file an appeal against the order within extended period. After taking cognizance of the said letter, the Appellant No.1 filed an appeal on 12.08.2022 against the impugned order with a request to condone the delay.

They further informed that they had received the impugned order itself in their office on 29.06.2022 and filed an appeal against the order on 12.08.2022. The date of filing of appeal was beyond the period of 30 days as prescribed in Section 100(2) of CGST Act 2017. However, they requested to condone the delay in filing of appeal.

The Appellant No. 2, the Joint Commissioner, State Tax, Suratgarh vide their letter dated 05.06.2024 informed that as per the records available in their office, the impugned Order was received by them on 15.09.2024. They submitted that accordingly they had filed the appeal on 14.10.2024 which was within the stipulated time for filing the appeal against an Advance Ruling. With regard to contention of the Respondent that the impugned Order was uploaded on 17.06.2022 on GST Portal, they submitted that this order was not reflecting/showing in their ID hence could not be treated as communicated .



## DISCUSSION AND FINDINGS

15. We have carefully considered the material evidence and facts available on record including the oral submissions and additional written submissions made by the Appellant No. 2 during the hearings dated 07.03.2024 and 07.05.2024. We have also taken into account the submissions made by authorized representatives of the Respondent at the time of personal hearing dated 07.05.2024.

We observe that the Authority of Advance Ruling, Rajasthan ('AAR') vide Advance Ruling No. RAJ/AAR/2022-23/08 dated 16th June, 2022 pronounced Ruling that *"the value of diesel filled free of cost (FOC) by the service recipient is not includable in the value of the GTA service proposed to be provided by the Applicant (GTA) in the facts and circumstances of the present application subject to conditions as mentioned in draft Transport Service Agreement/ contract incorporated in the body of this decision/ruling."*

16. We note that the Principal Commissioner, CGST Commissionerate, Jodhpur and subsequently the Deputy Commissioner, State Tax, Suratgarh have filed appeals against the impugned Ruling of the AAR, Rajasthan. The Respondent was communicated the appeals and comments were sought from them. The Respondent however did not supply any comments and instead requested for 4 weeks time to file preliminary objections against the appeal.

17. In the meantime, the Respondent filed DB CWP No. 14009 of 2022 before Hon'ble Rajasthan High Court, Jodhpur with the request that once there is an Advance Ruling in favor of the petitioner against which appeal has been preferred by the Department before the Appellate Authority then any issues regarding maintainability of the appeal (if any, raised by the petitioner) should be decided first before entering into the merits of the case. The Hon'ble High Court disposed of the writ petition vide Order dated 22.09.2022 with following directions:

"We find that though notice has been issued to the petitioner, the petitioner so far has not submitted any objection with regard to maintainability of the appeal before the Appellate Authority, though an application has been moved on 29.08.2022 before the Appellate Authority seeking to file preliminary objection.

At this stage, when no preliminary objection has been filed, all that we can say on the point of law is that as and when the preliminary objections to the maintainability of the proceedings are raised, those preliminary objections are required to be decided first before further proceeding in the matter.

With the aforesaid observation, the petition is disposed off. It is made clear that we have not decided the matter on merits and it is open for the parties to take such remedy as may be available under the law, if they are aggrieved by the order that may be passed."

18. We can discern the following from the order dated 22.09.2022 passed by the Hon'ble High Court:



(i) Notice of the appeal had already been issued to the Respondent who had not filed any objection with regard to maintainability of the appeal when the above mentioned Order dated 22.09.2022 was passed;

(ii) The Respondent was given liberty to file the preliminary objections and the Appellate Authority was directed to first decide the preliminary objections as and when they were filed before further proceedings in the matter.

19. In view of the directions given by Hon'ble Rajasthan High Court, Jodhpur, we proceed to examine & decide the preliminary objections first.

### **Written submissions to preliminary objections**

20. We note that the respondent has titled the preliminary objections as “**written submissions in respect of preliminary objections raised on behalf of M/s Sunil Giri**”. From what has been stated in the detailed submissions it transpires that they are claiming that “the Respondent has already filed preliminary objections to the appeal filed by the Appellant through the communications dated 29.08.2022, 29.09.2022, 27.10.2022 and 08.03.2024 whereby it was requested to provide certain information/ documents which have not been provided and therefore, the present written submission to preliminary objection is subject to information/ documents to be provided to him.”

21. We note that the Respondent has sought detailed correspondences by which the captioned appeals, being barred by limitation and lapsed, has been revived including the provisions of law vide which the same can be revived. We note that the Respondent have raised two issues. First, they want copy of the correspondence between AAAR & the Appellants. Second, they have raised a point of law. As regards supplying copies of communication, we note that Advance Ruling mechanism provided under the CGST Act, 2017 does not contain provisions allowing a Respondent to commence an investigation about functioning of the AAAR. However, we note that the relevant information contained in the communications finds place in the instant order. We also propose to decide the underlying issue behind the contention. As regards the provisions of law, there is nothing to be provided to the Respondent. Nevertheless, we will decide the point raised by them.

Accordingly, the “written submissions to preliminary objection” as supplied by the Respondent are being treated as “preliminary objection regarding the maintainability of the appeal” for proceeding further in the matter.

### **First Objection- Time limit for passing order u/s 101 of CGST Act, 2017 Stands Expired**

22. The first objection raised by the Respondent is that the time limit of ninety days for passing order as per Section 101(2) of the CGST Act, 2017 stands expired as the present appeals were filed on 12.08.2022 or 14.10.2022 and a period of more than one and a half years has since elapsed without any order having been passed. The



Respondent has, thus, submitted that no order can be passed on the appeals filed by the Appellants and the Order of Advance Ruling authority has attained finality. The issue of time bar did not exist at the time of filing of initial reply by the Respondent. As such, it does not qualify as a preliminary objection. However we wish to address the point raised by them.

22.1 The Respondent having raised the issue of time limit, the question arises whether the time limit of 90 days mentioned in the law is mandatory or advisory. In this context, it is pertinent to refer to the Section 101 of the CGST Act 2017 which reads as:

Section 101 – Orders of Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

**(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.**

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

22.2 Upon reading the subsection 2 above, we note that the law provides a right to the appellant for timely disposal of the appeal filed by them. We also note that in law, the meaning of ‘shall’ cannot always be construed to be as mandatory or something that **must** be done. It can also be considered to convey the meaning as ‘may’ based on the context in which it is being used. Thus we need to look into the context and the scheme of law.

In the instant case, the intention of the law according to the subsection 2 of the Section 101 of the CGST Act 2017 is to accord a right to the appellant to be heard and to obtain a ruling in respect of the appeal filed within a set time frame.

If, the meaning of ‘shall’ is to be taken in a binding or restrictive manner then upon expiry of 90 days, the order cannot be passed by the Appellate Authority, depriving the appellant of the right of getting the order issued in their appeal. The language of the law states that “**order referred to in sub-section (1) shall be passed ...**” and not “no order shall be passed after expiry of ninety days...” id est it is not negatively binding in any manner. Ergo, here in the instant case, the meaning of ‘shall’ is not to be construed as ‘mandatory’ but ‘directory’.



We further infer that the intention of law is not restrictive so much so that it culminates in an interpretation which is debilitating to the appellant, dispossessing them of their right which the law intended to grant them in the first place. The interpretation of the term 'shall' if construed as mandatory should not render the ensuing action as subversive to the original intention of the law.

22.2.1 We find that to elucidate the words "may" and "shall", and interpret them, the Supreme Court in *Dinesh Chandra Pandey v. High Court of Madhya Pradesh*, (2010) 11 SCC 500 has held as under:-

*"15. The courts have taken a view that where the expression "shall" has been used it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. This Court in Sarla Goel v. Kishan Chand, took the view that where the word "may" shall be read as "shall" would depend upon the intention of the legislature and it is not to be taken that once the word "may" is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that intent of the Rule is not frustrated."*

22.2.2 We also note that the hon'ble Supreme Court in the case of *Mohan Singh v. International Airport Authority of India* (1997) 9 SCC 132 held as below:

*"26. Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word „shall“, though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word „shall“ is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory. If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice."*



22.2.3 We also refer to the Hon'ble SC judgment in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat [(1997) 7 SCC 622] where the Hon'ble Court held:

*"Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if the "duty" is not set out clearly and specifically in the statute, it may be implied as correlative to a "right" Prof. Wade, also, in his well-known treatise 'Administrative Law', 8th Edition, at page 609 makes a distinction between a discretionary power and obligatory duties in the following terms*

*"Obligatory duties must be distinguished from discretionary powers. With the latter mandamus has nothing to do: it will not, for example, issue to compel a minister to promote legislation. **Statutory duties are by no means always imposed by mandatory language with words such as 'shall' or 'must'. Sometimes they will be the implied counterparts of rights, as where a person 'may appeal to a tribunal and the tribunal has a correlative duty to hear and determine the appeal.** Sometimes also language which is apparently merely permissive is construed as imposing a duty, as where 'may' is interpreted to mean 'shall. Even though no compulsory words are used, the scheme of the Act may imply a duty.*

22.2.4 We also note that the Hon'ble SC in the following cases has held that the use of 'shall' does not always exude a sense of mandatory nature:

- In State of UP v. Manbodhan Lal Srivastava, while examining the terms of Article 320, the Apex Court observed,

*"....the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect...."*

- In Khub Chand v. State of Rajasthan, the Hon'ble Supreme Court held:

*"Doubtless, under certain circumstances, the expression "shall" is construed as "may". The term "shall" in its ordinary significance is mandatory ... unless such an interpretation leads to some absurd or inconvenient consequences....."*

22.2.5 We also find it appropriate in the instant case to refer to the judgment of Hon'ble SC in case of Smt. Bachahan Devi & Anr vs Nagar Nigam, Gorakhpur & Anr on 5 February, 2008, in which it was held:

*28. The use of the words 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the*



statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid.....”

29. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word 'shall' is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. The word 'shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory.

30. The question, whether a particular provision of a statute, which, on the face of it, appears mandatory inasmuch as it used the word 'shall', or is merely directory, cannot be resolved by laying down any general rule, but depends upon the facts of each case particularly on a consideration of the purpose and object of the enactment in making the provision. To ascertain the intention, the court has to examine carefully the object of the statute, consequence that may follow from insisting on a strict observance of the particular provision and, above all, the general scheme of the other provisions of which it forms a part. The purpose for which the provision has been made, the object to be attained, the intention of the legislature in making the provision, the serious inconvenience or injustice which may result in treating the provision one way or the other, the relation of the provision to other consideration which may arise on the facts of any particular case, have all to be taken into account in arriving at the conclusion whether the provision is mandatory or directory. Two main considerations for regarding a rule as directory are: (i) absence of any provision for the contingency of any particular rule not being complied with or followed, and (ii) serious general inconvenience and prejudice to the general public would result if the act in question is declared invalid for non-compliance with the particular rule.

In view of the above discussion, we hold that the word 'shall' in Section 101 of the CGST Act has to be interpreted in an advisory way. Any other interpretation shall have the effect of denying the right of appeal to taxpayers & stake holders which is



not the scheme/intention of law. It will be interpreted to convey that the AAAR shall endeavour to pass the order in 90 days. Therefore, the argument of expiry of time limit for passing an order is hereby rejected as a preliminary objection as well as an objection to the grounds of appeal.

### **Second objection- Appeal barred by limitation**

23. The Respondent has raised another objection with regard to maintainability of the appeals stating that the appeals filed by the Appellant departments are time barred. We observe that the Respondent contended that the AAR order dated 16.06.2022 was communicated to the Appellants by speed post on 23.06.2022/ 28.06.2022 and also uploaded on the portal on 17.06.2022. The Respondent asserted that submission of appeals by the Appellants on 12.08.2022 and 14.10.2022 with the claim that the Order was communicated to them on 11.08.2022 and 15.09.2022 is clearly barred by limitation of time provided under Section 100 of the CGST Act, 2017.

23.1 We have gone through the appeal papers and observe that the first appeal against the Order dated 16.06.2022 of the Advance Ruling Authority has been filed by the Principal Commissioner, CGST & Central Excise, Jodhpur on 12.08.2022. It has been mentioned in the appeal that the impugned Order dated 16.06.2022 was received in their office only on 11.08.2022 and they have requested to condone the delay in filing appeal by 30 days as per **proviso** Section 100(2) of the CGST Act, 2017.

In appeal filed by the Deputy Commissioner, SGST, Circle Suratgarh on 14.10.2022 it has been mentioned that they received the AAR order dated 16.06.2022 only on 15.09.2022 and they also requested that extension of due date to file appeal by 30 days as per proviso to Section 100(2) of the CGST Act, 2017.

23.2 In this regard, we note that sub-section (2) of Section 100 of the CGST Act, 2017 provides a time limit of thirty days for filing of appeal against an Advance Ruling in the following manner:-

“(2) Every appeal under this Section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant.”

23.3 Thus, we note that a period of thirty days is available to the aggrieved for filing of appeal from the date on which the ruling is communicated to them. In the instant case it has been specifically mentioned by the Appellants that the impugned order was received by them on 11.08.2022 and 15.09.2022 respectively. We observe that considering date of receipt of the order, the period of thirty days had not expired when the respective appeals have been filed by them on 12.08.2022 and 14.10.2022. Still the Appellants requested that extension of one month for filing of appeal may be granted to them in terms of proviso to Section 100(2) of the CGST Act, 2017 which provides:

“Provided that the Appellate Authority may, if it is satisfied that the Appellant was prevented by a sufficient cause from presenting the appeal within the said



period of thirty days, allow it to be presented within a further period not exceeding thirty days.”

23.4 We observe that the Respondent disputed the dates of receipt of the impugned ruling in the respective offices of the Appellants 1 and 2. The Respondent claimed that as per the information available on the website of “India Post”, the speed post parcels sent by the office of the AAR were delivered to the addressee on 23.06.2022 and 28.06.2022 respectively and that the order was also uploaded on the common portal on 17.06.2022 itself.

23.5 In this regard, vide letters dated 31.05.2024, the details of receipt of the impugned Order were enquired from both the Appellants id est the Commissioner, CGST & CX/ST, Jodhpur and the Joint Commissioner, State Tax, Suratgarh.

23.5.1 We note that the Appellant No. 1 vide their letter dated 12.06.2024 informed that their office had received a letter from the Principal Commissioner, CGST Audit, Jaipur on 11.08.2022 enclosing a copy of the subject order, requesting them to file an appeal against the order within extended period. After taking cognizance of the said letter, the Appellant No. 1 filed an appeal on 12.08.2022 against the impugned order with a request to condone the delay.

They further informed that they had received the impugned order itself in their office on 29.06.2022 and filed an appeal against the order on 12.08.2022. The date of filing of appeal was beyond the period of 30 days as prescribed in Section 100(2) of CGST Act 2017. However, the Appellant No. 1 had also submitted a request to condone the delay in filing of appeal. We found that impugned Order dated 16.06.2022 was communicated to the Appellant No. 1 on 29.06.2022 and an appeal against this order was filed by them 12.08.2022 and they have also requested to condone the delay in filing of appeal. We condone the delay in filing of appeal. Thus we hold, the appeal was filed within the extended period and not time barred.

23.5.2 The point raised by the Respondent thus gets reduced to the number of days for which delay should be condoned. If we go by the contention of Appellant No. 1, delay to be condoned works out to 15 days (29.07.2022 to 12.08.2022). On the other hand, if the date insisted by the Respondent is taken the delay to be condoned works out to 21 days (22.07.2022 to 12.08.2022). We choose to condone the delay on the higher side in the matter.

23.5.3 The Appellant No. 2, the Joint Commissioner, State Tax, Suratgarh vide their letter dated 05.06.2024 submitted that as per the records available in their office, the impugned Order was received by them on 15.09.2024. They submitted that accordingly they had filed the appeal on 14.10.2024 which was within the stipulated time for filing the appeal against an Advance Ruling. With regard to contention of the Respondent that the impugned Order was uploaded on 17.06.2022 on GST Portal, they submitted that this order was not reflecting/showing in their ID hence could not be treated as communicated. We observed that the impugned Order was communicated on 15.09.2022 to the Appellant No. 2 and an appeal was filed by them on 14.10.2022



that was within statutory period of 30 days, accordingly, we hold that the appeal was filed within time prescribed, hence not time barred.

23.6 We, therefore, hold that the appeals filed by the Appellants are well within the period of limitation are not barred by it as provided under proviso to Section 100(2) or Section 100 (2) of the CGST Act, 2017. Consequently, the preliminary objection to this effect raised by the Respondent is liable for rejection and is hereby rejected.

### **Third objection- Procedure not followed**

24. The Respondent argued that the appeals have been filed by the Appellants in hard copy which is contrary to the express requirements of Section 100(3) of the CGST Act, 2017 read with Rule 106(2) of the CGST Rules, 2017 as the same require that the appeal must be filed by the concerned officer or the jurisdictional officer referred to in Section 100 on the common portal in FORM GST ARA-03.

24.1 In this regard we note that the facility of filing appeals online on the common portal is a measure of trade facilitation and ease of doing business. It not only saves time and money of the appellant and obviates the need for physical visit to the offices but also helps automatic digitization of case records besides positive impact on environment. However, online filing of appeals is a measure of facilitation only and the same cannot be used as a tool to deny an Appellant the right to appeal simply because the appeal has been filed in hard copy.

24.2 Be that as it may, we note that though the rules provide for online filing of appeal but the same do not prohibit filing of appeal in physical form. In this regard, Rule 107A of the CGST Rules, 2017 provides as follows:-

“Manual filing and processing. – Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.”

24.3 In view of the express provisions of Rule 107A of the CGST Rules, 2017 manual filing of appeals by the Appellants is in consonance with the legal provisions and, therefore, the preliminary objection raised by the Respondent on this count is liable to be rejected and the same is hereby rejected.

### **Fourth Objection - Appellant No. 1 not Proper Authority to file an appeal**

25. We observe that Respondent raised an objection that the Principal Commissioner, CGST and Central Excise, Jodhpur (Appellant 1) is neither ‘concerned officer’ nor ‘jurisdictional officer’ as specified in Section 100 of the CGST Act, 2017



who may file an appeal against the AAR Order. We note the argument is backed by a reasoning that the law does not define the terms 'concerned officer' and 'jurisdictional officer' but in the instant case the State GST authority has acted as 'concerned officer' in making submissions on merits during the course of decision of the application seeking Advance Ruling and since he is also the jurisdictional officer in the matter, the Central GST authority is neither 'concerned officer' nor 'jurisdictional officer'.

25.1 We note that the provisions concerning filing of appeal against the Advance Ruling as provided in Section 100 of the CGST Act, 2017 read as follows:-

“(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any Advance Ruling pronounced under sub-section (4) of Section 98, may appeal to the Appellate Authority.

25.2 From perusal of the said provisions of Section 100 *ibid* we find that the terms 'concerned officer' and 'jurisdictional officer' have been used for referring to two different persons who are distinct from each other and nowhere does the sub-section give an impression that concerned officer and jurisdictional officer can be one and the same authority of State GST or Central GST.

25.3 Further we find it pertinent to refer to the provisions governing forwarding of a copy of the Advance Ruling as contained in Section 98 of the CGST Act, 2017 wherein the said terms have been employed as follows:-

“(7) A copy of the Advance Ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.”

25.4 From the above provisions also we note that the terms 'concerned officer' and 'jurisdictional officer' have been employed to denote two different authorities and the sub-section (7) of Section 98 *ibid* does not indicate that 'concerned officer' and 'jurisdictional officer' can be one and the same officer.

25.5 From the above provisions of law, we note that 'concerned officer' and 'jurisdictional officer' are two different officers distinct from each other. Further, since there are only two officers, one from the Central GST and the other from the State GST, exercising territorial jurisdiction over a taxable person it logically follows that both are entitled to file an appeal against the Advance Ruling pronounced in respect of that taxable person. Thus, the appeal filed by the Central GST authority is well within the scope of Section 100(1) of the CGST Act, 2017.

#### **Fifth objection- Appellant No. 2 revisiting the stand already taken**

26. The Respondent has argued that the order passed by the AAR is an 'Consensus ad Ordinem' and the Appellant No. 2 (Deputy Commissioner State Tax, Suratgarh) is



bound by the 'Principle of Estoppel'. The Respondent averred that in the garb of appeal remedy, the Appellant cannot be allowed to revisit the stand taken before the AAR. In this regard the Respondent has made the following submissions:-

(i) The AAR had provided an opportunity of being heard to the Appellant No. 2 being the "concerned officer" on the averments made in the application filed by the Respondent applicant;

(ii) The Appellant State GST authority took the stand that "GST is not leviable on Free of Cost (FOC) material provided by the service recipient to applicant when such goods are in the scope of service recipient as per contractual terms" which was duly recorded in the impugned AAR order dated 16.06.2022

(iii) The Appellant agreed that in case of Respondent, the value of material provided free of cost by the service recipient would not be included in the value of supply as per the provisions of Section 15 of the CGST Act, 2017.

26.1 We have gone through the provisions concerning appeal before the Appellate Authority as provided in Section 100 of the CGST Act, 2017 which are reproduced below:

"(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any Advance Ruling pronounced under sub-section (4) of Section 98, may appeal to the Appellate Authority.

(2) Every appeal under this Section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the Appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this Section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed."

26.2 From perusal of the provisions of Section 100 of the CGST Act, 2017, we find it evident that they do not provide for any restrictions so far as the grounds of appeal are concerned. We note that so long as the 'jurisdictional officer' or "the concerned officer" is aggrieved by the Advance Ruling pronounced under Section 98(4), he may prefer an appeal to the Appellate Authority.

26.3 In the instant case we note that the 'Jurisdictional Officer' i.e. the State GST authority has raised serious objections as regards the applicability of the CBIC's circular and of various judgments referred to by the Advance Ruling Authority and contested the Advance Ruling mainly on the following grounds:-



(i) In the instant case, the price cannot be termed as sole consideration for services as Diesel is being supplied free of cost by the recipient, hence, transaction value as per agreement cannot be considered as sole consideration and condition as per Section 15(1) of CGST Act, 2017 is not fulfilled.

(ii) The provision of GTA services envisages providing a vehicle in running condition with requisite fuel being a mandatory component, without which the service of GTA cannot be 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 Free of Cost, the value of the same will have to be considered as additional consideration flowing from the recipient to the supplier. Diesel provided on Free of Cost basis under terms of the contract is purely consideration as per Section 2(31) of the CGST ACT, 2017.

(iii) Authority of Advance Ruling has mis-interpreted the phrase “liable to pay in relation to such supply”. In case of GTA, fuel is main inward supply to execute outward supply. Irrespective of the fact that the cost is being borne by supplier or recipient, the onus of getting inward supply always lies with the supplier.

26.4 Thus, we note that so long as an Appellant is aggrieved by an Advance Ruling pronounced by the AAR, he may prefer an appeal and the Appellant cannot be barred from filing an appeal.

26.5 As regards, the ground that the Appellant has revisited the stand taken before the AAR, we note that the Joint Commissioner, State Tax, Suratgarh vide letter dated 08.05.2024 furnished additional submissions in continuation of those made during the Personal Hearing held on 07.05.2024. It is noted that during the course of hearing, representative of the respondent has raised a contention that the appellant (Deputy Commissioner, SGST, Circle Suratgarh) cannot revisit the stand taken before the AAR to the effect that GST is not leviable on free of cost (FOC) materials supplied by service recipient to applicant when such goods are in the scope of service recipient as per contractual terms.

In this regard, the Joint Commissioner, State Tax, Suratgarh vide their aforementioned letter dated 08.05.2024 informed that the stand taken by the Deputy Commissioner, State Tax, Circle Suratgarh, had implication for the whole state of Rajasthan. As such approval of higher officers was required before submitting the comments to AAR. Later on, the matter came to the notice of higher officers and it was felt that the stand taken by the Deputy Commissioner, State Tax, Circle Suratgarh, was not correct, legal and proper. Consequently, it was decided to file appeal in the matter and appeal was filed accordingly.

26.6 It is a settled position of law that there is no estoppel against the State and no estoppel against Statute implying that the rule of estoppel does not operate in the instant case. At the same time, we find that as a principle “Only a competent person’s promise can operate as estoppel”



A representation can operate to create promissory estoppel only if it was within the competence of the promise-maker to make good such representation. In case the Central Board of Excise and Customs or Central Government makes such promise, their promise would operate as estoppel only if they are competent to make good such promise [U.O.I. v. Godfrey Phillips - 1985 (22) E.L.T. 306 (S.C.) = 1985 (4) SCC 369].

A letter from the State Trading Corporation is not an estoppel on Customs. Jain Exports (P) Ltd. v. U.O.I. - 1992 (61) E.L.T. 173 (S.C.) = 1988 (3) SCC 579]

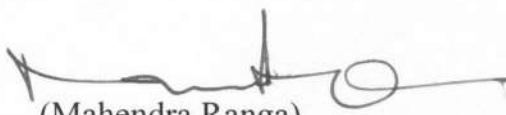
26.7 In the instant case, we observe that Appellant No. 2 filed the appeal proceedings after consideration of the matter by higher authority in the State Tax department, whereas their initial stance was at their own accord sans proper approval from the higher authority. Consequently, we find that an appeal cannot be deemed non-maintainable merely because it contradicts the earlier stance taken by the appellant, under mistaken belief about the jurisdiction and authority. Thus, we hold that Appellant No. 2 has rightfully filed the appeal, rendering the issue of revisiting the previously taken stand as incorrect & improper.

26.8 We therefore hold that the principle of estoppel cannot be made applicable in the instant case. The preliminary objection on this count is, therefore, liable to be rejected and the same is hereby rejected.

27. In view of the above discussion and findings recorded hereinabove, we pass the following order:

### ORDER

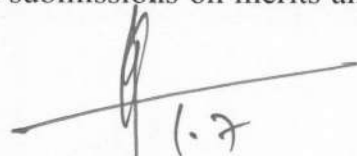
28. We hold that the preliminary objections raised by the Respondent against the appeals filed by the department against the Advance Ruling dated 16.06.2022 are not sustainable and the appeals are maintainable and deserve to be decided on merits. The Respondent is, therefore, hereby requested to make submissions on merits and appear for personal hearing as and when fixed.



(Mahendra Ranga)

Chief Commissioner of CGST & CX Jaipur  
Member (Central Tax)

(Mahendra Ranga)  
Member, AAAR (Central Tax)



(Dr. Ravi Kumar Surpur)

Chief Commissioner of SGST Jaipur  
Member (State Tax)

(Dr. Ravi Kumar Surpur)  
Member, AAAR (State Tax)

### SPEED POST

To  
M/s Giri Transport Company (Prop. Sh. Sunil Giri)  
C/o Sh Rahul Lakhwani, Advocate  
M/s Chir Amrit Legal LLP  
6th Floor, 'Unique Destination',  
Opp. Times of India, Tonk Road, Jaipur - 302 015

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
4. The Commissioner, CGST Commissionerate, Jodhpur.
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
6. The Assistant Commissioner, CGST Division-I, (CGST Commissionerate Jodhpur) Sukhadia Nagar, N Block, Sri Ganganagar, Rajasthan 335001.
7. The Deputy Commissioner, State Tax Department, Circle Suratgarh Ward- I Zone Ganganagar, Kar Bhawan, Near Sadar Police Station, Hanumangarh Road, Suratgarh- 335804.
8. M/s Giri Transport Company (Prop. Sh. Sunil Giri), near Swami Dharmshala, Ward 12, Suratgarh-335804, Rajasthan.
9. The web-manager - [www.gstcouncil.gov.in](http://www.gstcouncil.gov.in)
10. Guard File.



(Member, AAAR, Central Tax)  
(Member, Range)