

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2023/36
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/53)

Date: **06.12.2023**

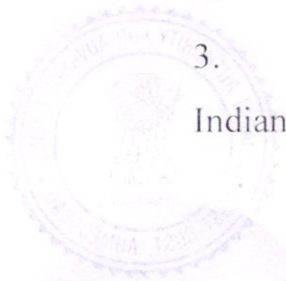
Name and address of the applicant	:	Tata Advanced Systems Ltd 5 th floor, No. 521, Loha Bhavan, Old High Court Lane, Navrangpura, Ahmedabad, Gujarat – 380 009.
GSTIN of the applicant	:	24AACCT5245K1Z9
Date of application	:	12.11.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a)(b)(c)(e)(g)
Date of Personal Hearing	:	09.02.2023 and 29.08.2023
Present for the applicant	:	Rohit Jain (Advocate), Jignesh Ghelani (C.A.) Niraj Bagri (C.A.) K. Ugendra (C.A.) Harsh Rautela

Brief facts:

M/s. Tata Advanced Systems Ltd, 5th floor, No. 521, Loha Bhavan, Old High Court Lane, Navrangpura, Ahmedabad, Gujarat – 380 009 [for short – ‘applicant’] is engaged in the business of assembly, manufacture and supply of aircrafts and their GST registration number is 24AACCT5245K1Z9

2. Ministry of Defence (MoD), Government of India entered into a contract dated 24.09.2021 with Airbus Defence and Space, S.A.U., Spain [Airbus] for manufacture and supply of 56 C-295 MW transport aircraft with associated equipment ("main contract") under its C-295 aircraft programme. Airbus, is the original equipment manufacturer (OEM) responsible for development activities, manufacturing, assembly, delivery and support of the C-295 aircraft programme and is incorporated in Spain. It is not registered under GST in India.

3. Under C-295 programme the applicant has been appointed Indian Aircraft Contractor (IAC) for manufacture and supply of 40 aircrafts.



4. In terms of the contractual arrangement, out of the 56 aircrafts, first 16 aircrafts will be supplied directly by Airbus from Spain to MoD in a fly-away condition. For the remaining 40 aircrafts, Airbus Defence & Space SAU and Tata Consultancy Services has entered into a contract with the applicant [as the Indian Aircraft Contractor (IAC)] for manufacture and supply vide contract dated 29.10.2021 (hereinafter referred to as the 'contract').

5. The relevant clauses of the contract dated 29.10.2021, entered into between Airbus Defence & Space SAU, Tata Advanced Systems Ltd and Tata Consultancy Services Ltd, is reproduced below for ease of reference viz:

'Airbus SE' means Airbus Societas Europaea, a European public limited-liability company with its registered office in Amsterdam.....

'Aircraft' means the C-295 MW transport aircraft modified by the purchaser for installation of CSE and including associated role equipment & technical literature;

'C295 Aircraft Programme' means all activities to be undertaken by the purchaser in relation to the aircraft including the design, development, certification, manufacturing & support;

'Free Issue Material' means any material & tool provided by purchaser to the supplier during the term of this Contract;

'IAC' the 'Indian Aircraft Contractor' mean the consortium formed by Tata Advanced Systems Ltd & Tata Consultancy Services Ltd lead by Tata Advanced System Ltd;

'India C295 Aircraft Programme' means all the activities to be undertaken by the purchaser in relation to the main contract, including the design, development, certifications, manufacturing and support;

'Item' means Aircraft, and/or any other deliveries related to the aircraft such as any assembly, subassembly, component, and/or any part thereof (including spares), software, Tooling (as hereafter defined), any sort of data, or any other goods and associated services which shall be designed, developed, manufactured, supplied, performed and/or supported by the supplier pursuant to the contract. The item is described in the specification;

'Purchaser' means Airbus Defence and Defence and Space S.A.U.;

'Service' means any work and /or service performed in accordance with this Contract;

'Supplier' means TASL, in its role set forth in Article 5.4 of the Contract;

'Support' means the activities and obligations of the supplier in relation to the after sales activities and maintenance of the Aircraft;

'Tooling' means all dies, jigs, tools, gauges, fixtures, patterns, moulds, models, equipment, software tools and other items, required for the development, testing, manufacture and support of the item;



2. Scope, Orders, Precedence & Duration

2.1. Scope of the Contract

This contract sets out the terms and conditions under which the supplier shall undertake the manufacture & the supply of 40 (forty) C-295 MW transport Aircraft related deliveries, and design, manufacture and supply of Tooling, as specified in this contract and its Annexes & provide support activities (including support to certification and continued airworthiness) for the India C295 Aircraft program.

2.2. Orders

2.2.1 All the orders under this Contract shall be placed by the Purchaser upon the Supplier. The following address to be considered as project execution address & this would be changed once the final location for execution is finalised, which would be supported by the address modified orders by the Purchaser to the Supplier:

Tata Advanced Systems Ltd.

Plot Nos. 42-43 Electronic City, Phase-1, Hosur Road,
Bengaluru 560100, Karnataka
GSTN 29AACCT5245K1ZZ

Any change in the place of the orders must be notified to the purchaser in writing by the supplier with sufficient prior notice.

3.1. SCOPE OF WORK

3.1.1. The Supplier's activities shall comply with the requirements of the Contract and associated Orders and shall include, as necessary and/or as requested by the Purchaser, but shall not be limited to:

- (i) activities necessary to ensure compliance of the Item with the requirements of the Specification (including those in connection with continued airworthiness of the fleet, in service requirements and military qualification requirements as applicable)
- (ii) supply of all material, including, but not limited to raw material standards, sealants and adhesives.
- (iii) the manufacture, delivery (as defined in Article 7 "Inspection, Delivery and Acceptance") and support of the Items (as further defined in the Article 3.4 "Support")
- (iv) the design, manufacture and maintenance of Tooling as necessary to develop and manufacture the Items;
- (v) the supply of all relevant, updated and accurate documentation (including but not limited to documentation for certification, for continued airworthiness) and support requirements.
- (vi) the performance of, or assistance to the Purchaser for, as the case may be, any modification activities as further defined in Article 8 "Modifications"
- (vii) the provision of any prototype, moulds, test samples, test tools, and the related documentation and more generally of any deliverable required in the Contract or which is necessary to enable the Purchaser to perform its own activities in connection with the Item and can be reasonably requested by the Purchaser.
- (viii) the provision of assistance, training (further described in Annex W "Training") and advice, as required in the Contract, which is necessary to enable the Purchaser to perform its own activities in connection with the Item, including but not limited to flight test programmes and final assembly line activities, use of the IP Rights (pursuant to Article 13 "Intellectual Property Rights"), certification qualification and integration of the Item in the Aircraft or any part thereof.
- (ix) collaboration in the transfer of work, especially undertaking the purchase of all inventories for the subcontracted work of the Purchaser or the current source of supply, agreeing to the Purchaser a delivery schedule and payment for the entire inventory, by issuing appropriate orders Each of these deliveries will be at least an amount that covers one year of production."

4.2. PROPERTY ON LOAN



4.2.1. Title and Risk

4.2.1.1 Any article, including free issue material exceptionally supplied by the Purchaser or loaned by the Purchaser to the Supplier for the performance of the Contract ("Purchaser's Property") shall be delivered to the Supplier in good and serviceable condition and remain the property of the Purchaser and shall (except for free issue material returned to the Purchaser incorporated in the Item) be returned to the Purchaser at no cost to the Purchaser upon its request in good and serviceable condition (normal wear and tear excepted), failing which the Purchaser shall be entitled to full compensation for the damage caused to such Purchaser's Property(s)

4.2.1.2 Purchaser's Property shall be identified by the Supplier, especially in the Supplier's premises, with appropriate tags or labels as the property of the Purchaser

4.2.1.3 The Supplier undertakes at its expense to maintain the Purchaser's Property to a standard so as to meet the maintenance requirements of both the Purchaser and the Customer for as long as a minimum of five (5) Aircraft are in regular operation For the avoidance of doubt, following the expiry of the warranty period of the last Aircraft delivered, the Supplier shall be entitled to pack and store the Tooling and the Purchaser property but shall remain responsible for its custody, maintenance and set up at its own costs whenever reinstallation is required by the Purchaser

4.2.1.4 If any action is taken by a third party in respect of any of the Purchaser's Property, the Supplier shall notify the Purchaser of such action and shall notify the third party that such Purchaser's Property is not the property of the Supplier

4.2.1.5 All risks in such Purchaser's Property shall pass to the Supplier upon delivery thereof to the Supplier and shall remain with the Supplier until returned to the Purchaser 4.2.1.6 The Supplier shall return any Purchaser's Property upon request by the Purchaser and at the latest, upon expiry or termination of all the Orders for the performance of which such Purchaser's Property was loaned.

4.2.1.6 The supplier shall return any Purchaser's property upon request by the purchaser and, at the latest, upon expiry or termination of all the orders for the performance of which such purchaser's property was loaned.

4.2.2. Use of Purchaser's Property: the Supplier shall not use any Purchaser's Property for any purpose other than the performance of the Contract The Supplier shall not loan or pass on to a third party or remove from a specific site any Purchasers Property without the prior written consent of the Purchaser."

6. The applicant, under Annexure I to their application, has further stated as follows viz

(b) Manufacture of detailed parts and sub-assemblies

- Overall, the Applicant will manufacture the entire scope of 18059 part numbers required for the airframe (called as detail parts) in India with the exception of certain parts which would be provided by Airbus as Free-Issue-Materials (FIM)
- There is a transfer plan agreed between the parties, to achieve increasing levels of indigenization starting with 1,936 parts made by Applicant in the 1st aircraft, and achieving the full extent of indigenization of 18,059 parts by the 17 aircraft.
- Detail parts production shall be performed either by the Applicant or external supply chain but always under the responsibility of the Applicant.
- Approximately 600 parts of the entire aircraft have been notified as out of scope, as these are of manufacturing technologies which do not exist in India and hence, the same will be supplied FOC as FIM by Airbus under the contract."



7. The applicant has stated that FAL (Final Assembly Line) includes many materials which are source- controlled and directly supplied by the Airbus, as part of an approved list parts and components, which cannot be indigenized. Such parts and components, provided as FIM [free issue materials], for the entire program, includes materials such as aircraft engine, landing gear, avionics suite, propeller, on board radar etc. The exact value or count of such parts, and components as per the applicant is not known. However the applicant has assumed that the FIM scope could be approximately 50-55% by value of an aircraft. The ownership of the FIM shall always vest with Airbus and the same is either incorporated in the aircrafts or returned to Airbus by the applicant, if unused.

8. The applicant has also stated that they will act as the importer in respect of FIM supplied by Airbus and will discharge applicable duties of customs on the FIM, at the time of import. The Applicant is entitled to raise invoice on Airbus for reimbursement of all the indirect taxes including the duties of customs paid on FIM.

9. Payment terms of the contract states that for manufacture and supply of aircrafts, Applicant will raise invoice on Airbus inclusive of applicable taxes. The said invoice will then be forwarded by the Airbus to MoD for payment. The payments under the contract are firm and fixed in currency basket of Euros, USD and INR. While the INR payments will be made by MoD directly to the applicant on behalf of Airbus, the payments in Euros and USD will be made by Airbus to the applicant. The payment schedule involves certain amounts received as advances on milestone basis and thereafter on per aircraft delivery basis. Airbus will obtain registration under Goods and Services Tax (GST") in India.

10. On the aforementioned facts, the applicant vide his application dated 24.12.2021, sought ruling on the following questions viz

- (i) What is the nature of supply under the contract between the applicant & Airbus [ie whether the same will qualify as 'supply of goods' or supply of service']?
- (ii) Given the nature of the activities undertaken by the applicant under the contract, what will be the appropriate classification & rate of tax of the said supply?
- (iii) What is the value to be adopted for the purpose of payment of GST?
- (iv) What will be the time of supply for payment of GST?



11. The Authority for Advance Ruling (AAR) vide its Advance Ruling No. Guj/GAAR/R/2022/27 dated 11.5.2022, held as follows: [relevant extract]

9. In conspectus of aforementioned facts on record & in pursuance to said clause 2.2.1 at page number 14 of the said contract dated 29.10.2021, We hold that the said application filed before use by Tata Advance Systems Ltd, Ahmedabad GSTIN24AACCT5245K1z9 is rejected for the following three reasons:

- i. The Applicant has no locus standi to file said Advance Ruling Application, as per clause 2.2.1 of the said contract 29.10.21, wherein the project execution unit is TASL Bengaluru GSTIN is 29AACCT5245K1ZZ.*
- ii. The application by the applicant is premature and without locus standi, as no intimation of change in place of project execution as per clause 2.2.1 has been made in the name of TASL Ahmedabad GSTIN 24AACCT5245K1Z9.*
- iii. In the eyes of GST scheme of law, GSTIN 24AACCT5245K1Z9 (TASL Ahmedabad), GSTIN 29AACCT5245K1ZZ (TASL Bengaluru) & GST registered Unit of TASL Hyderabad are distinct persons for the prupose of CGST Act, as per the provisions of Section 25(5) CGST Act, which reads as follows:*

Section 25. Procedure for registration.-

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

10. The application is rejected as non-maintainable under Section 95(a) of CGST Act.

12. Against the above ruling rejecting their application, the applicant filed a rectification application.

13. The applicant thereafter decided to undertake the activity in the State of Gujarat. In this connection the Airport Authority of India, vide their letter dated AV.21012/24/2022-IM dated 27.10.2022, has allotted land admeasuring upto 50 acres in Operational Area of Vadodara Airport to the applicant for setting up FAI and MRO facility.

14. In light thereof, the applicant has filed a fresh application and sought an Advance Ruling on the following questions:

- (i) What is the nature of supply under the contract between the Applicant and Airbus (i.e., whether the same will qualify as 'supply of goods' or 'supply of service')?
- (ii) Given the nature of the activities undertaken by the Applicant under the contract, what will be the appropriate classification and rate of tax of the said supply?
- (iii) What is the value to be adopted for the purpose of payment of GST?
- (iv) What will be the time of supply for payment of GST?



15. The applicant has relying on sections 2(52) and 7 of the CGST Act, 2017, and judgements in the case of BSNL [2006 (3) TMI 1- SC] and JK Tyre & Industries Limited [2017 (10) TMI 258-Mad (HC)] made the following submissions:

- that whether a contract involves supply of goods or otherwise must be determined on true subject matter of the contract;
- that on perusal of the various clauses of the contract and detailed scope of work, the main responsibility of the applicant is to manufacture and supply 40 C295 aircrafts as per the established work share and delivery plan;
- that the main responsibility of the applicant under the contract is to produce 40 C-295 aircrafts;
- that while the scope includes various activities such as assembly, integration, painting, testing, manufacture of detailed parts, supply of tooling, provision of consumables etc. it is essentially a detailing of the various activities to be undertaken, which ultimately results in manufacture and supply of the airworthy aircrafts.

16. The applicant in addition to the above scope of work, is also required to provide certain support services to Airbus viz:

- provision of support activities in terms of clause 2.1 of scope of work;
- after sales activities and maintenance of the aircraft;
- the support service includes activities such as maintenance of FIM and tools belonging to Airbus even after the sale of aircrafts as evident from clauses 4.1.3 and 4.2.1.3 of the contract;
- support to be provided by the applicant to Airbus including post sale of the aircrafts in terms of clause 3.4.

17. The applicant also states that the contract entails both supply of goods, viz aircrafts as well as support services; that the supply of aircrafts & provision of support services are naturally bundled & supplied in conjunction with each other in ordinary course of business & hence in terms of section 2(30) of the CGST Act, the applicant feels that the supply is a composite supply.

18. A conjoint reading of clauses 5.2 [warranties], 7.3.6 [title and risk], 7.4.1 [acceptance certificate], and 11.1 [termination of contract], clearly reveals

- that the essential scope of work is to supply aircrafts;
- that the aircrafts are to be in airworthy condition & should comply with the requirement under the contract;
- that the title & risk is transferred only upon issuance of acceptance certificate by Airbus;
- that in case of rejection by Airbus, the applicant is required to correct the deficiency & re-supply such aircraft to Airbus;
- that supply of aircrafts adhering to the specification of the C-295 programme of the MoD is the predominant scope of work of the applicant & is therefore a principal supply in terms of section 2(90) of the CGST Act, 2017.
- that the support services provided by the applicant are incidental and ancillary to the principal supply of the aircraft & completion of services in isolation will not result in discharge of the obligations under the contract.



- that they would like to draw the analogy from para 3 of letter no. 334/1/2008-TRU dtd 29.2.2008 which dealt with determination of principal supply of service when various services were bundled together to substantiate the submission;
- that they would like to rely on the Advance ruling in the case of M/s. Air Control and Chemical Engineering Co Ltd [2021(1) TMI 542-AAR-Gujarat].

The applicant, therefore, is of the view that the contract with Airbus, is a composite supply of goods & services, wherein the principal supply is manufacture & supply of aircraft in airworthy condition; that the various services provided are only incidental or ancillary to the main supply of aircrafts.

19. Additionally, the applicant feels that since their activity will qualify as a composite supply with the principal supply being supply of goods, i.e. aircraft, the same is classifiable under CTH 8802 and will attract GST @ 5% in terms of entry 244 of notification No. 1/2017-IT(Rate) dated 28.06.2017.

20. The applicant has further stated that in terms of section 12(2), *ibid*, the liability to pay GST on supply of goods shall arise on the date of issue of invoice or the last date to issue invoice, whichever is earlier. Further, as per section 31(1) of the CGST Act, in case of supply of goods, invoice shall be issued before or at the time of removal of goods or delivery of goods. Further, as per notification No. 66/2017 CT dated 15.11.2017, in the case of supply of goods, the time of supply will be attracted only at the time of issue of invoice and not on receipt of payment. Therefore, the applicant feels that there is no requirement to pay GST on receipt of advance in the case of supply of goods.

21. Further, in terms of section 15 *ibid*, as the Applicant and Airbus are not related parties and since there is no consideration flowing from Airbus to the applicant other than the contract price agreed between the parties, the applicant feels that the value of supply would be the contract price agreed between the Applicant and Airbus.

22. The applicant states that various parts, components and materials which cannot be indigenized and are provided as FIM is not to be included in the value of supply.

23. The applicant has further relied on circular No.47/21/2018- GST dated 08.06.2018 and Section 15 of the Model GST law as issued by the



Empowered Committee of State Finance Ministers, in June 2016 to state that the initial law proposed inclusion of value of goods supplied free of cost directly or indirectly by recipient to supplier. However in the subsequent model law issued in November 2016, it was removed and the change in the language continues to remain same even in section 15(2)(b) of the Central Goods and Services Tax Act, 2017; that the intent of the law makers was never to charge tax on goods provided free of cost by the recipient and which was never within the scope of the supplier; that the intention of the Government was to bring only those free of cost supplies, within the ambit of valuation which was the responsibility of the supplier but incurred by the recipient and **not to tax** free of cost supplies which are the responsibility of the recipient of goods.

24. The applicant has also relied upon the judgment in the case of Bhayana Builders [2018 (10) GSTL 118 (SC)] to substantiate their above submission.

25. The applicant further states that supplies which are contractually agreed to be supplied by the recipient cannot form part of transaction value.

26. Personal hearing was held on 9.2.2023 and 29.8.2023 wherein Shri Rohit Jain, Advocate, Jignesh Ghelani, CA, Niraj Bagri, CA, K Ugendra, CA & Harsh Rautela, PM, appeared and reiterated the facts as stated in the application. On being informed that their application is admitted they submitted that the rectification filed be treated as being withdrawn. They further sought time to file additional submission.

27. In their additional written submission, while reiterating their earlier submission, it was further stated as follows viz

- that the main responsibility was manufacture and supply of 40 aircrafts;
- that the activities under the contract are integral part of manufacture and supply of aircraft & therefore it will not constitute a distinct supply of service by applicant to Airbus;
- that in the case of Patnaik & Co [1965 (1) TMI 44-SC], it was held that a contract of sale is one whose main object is transfer of property in & delivery of possession of a chattel as a chattel to the buyer; that they also wish to rely on the case of T V Sundaran Iyengar Sons [1975 35 STC 24], The Central India Machinery Manufacturing Co Ltd [1977 (4) TMI 150 - SC], Azad Coach Builders P Ltd [2000 (2) TMI 808], Hindustan Shipyard Ltd [2000(7) TMI 864 - SC], C C Sebastian [2007 8 VST 798 Ker], Cement Concrete P Ltd [2023 (8) TMI 403- Patna];



- that the contractual obligation of the applicant is not discharged till the supply of airworthy aircrafts; that the title and risk in respect of the aircraft will pass from the applicant to Airbus only at the time of delivery of the aircrafts;
- that certain components such as engines, propellers, hydraulic landing gear etc provided as FIM will be used in final assembly of aircrafts; that FIM provided by Airbus under contract will not detract the nature of supply; that what is supplied by the applicant is an airworthy aircraft after carrying out the manufacturing activity & integrating the FIM supplied by the customer;
- that more than 18600 parts are required for manufacture of an aircraft; around 95% of the parts of an aircraft will be manufactured by the applicant over the period of contract; that bulk of the material in the manufacture is manufactured by the applicant despite the FIM provided by Airbus;

Discussion and findings

28. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

29. We have considered the submissions and additional submission made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearings. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

30. The first question to be determined is whether the nature of the supply under the contract entered into between the applicant and Airbus would qualify as 'supply of goods' or otherwise. The applicant feels that the contract entails supply of goods. The applicant's reasoning is based on the fact that in terms of the various clauses of the contract, the main responsibility thrust on the applicant is to supply 40 C-295 aircrafts as per the established work share and delivery plan. The reason for seeking a ruling we believe is because the scope of work, binds the applicant to also provide certain support services as listed out in paragraph 16.

31. The submission that it is supply of goods by relying on Section 2(52), which defines goods to mean every kind of movable property other than money & securities but includes actionable claim, growing crops, grass



things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply..... is not a tenable argument. We find that this contract which encompasses both supply of goods and services is something which is routinely resorted to by business enterprises. Thus, what needs to be determined is whether the supply undertaken by the applicant involving both goods and services in terms of the contract is a *composite supply* in terms of section 8(a) or a *mixed supply* in terms of section 8(b) of the CGST Act, 2017.

32. Now, both the terms *composite supply* and *mixed supply* stand defined under section 2, viz

(30) "**composite supply**" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

(74) "**mixed supply**" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

(90) "**principal supply**" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

In some cases, combined supply is a normal trade practice. This is termed as 'composite supply'. While in some cases, it is not normal trade practice, which makes it a mixed supply. Further, while a composite supply is naturally bundled, a mixed supply is not naturally bundled in ordinary course of business. Now, naturally bundled is a term which is not defined under the CGST Act. However, in the erstwhile Finance Act, 1994, this principle was explained in para 9.2.4 of CBIC's Taxation of Services an Education Guide, published on 20.6.2012 viz

9.2.4 Manner of determining if the services are bundled in the ordinary course of business



Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*
- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.*
- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -*
 - *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*
 - *The elements are normally advertised as a package.*
 - *The different elements are not available separately.*
 - *The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.*

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

33. A conjoint reading of the contract and the scope of work clearly shows that the main task entrusted to the applicant under the contract is to produce 40 C-295 aircrafts. The scope includes various activities such as assembly, integration, painting, testing, manufacture of detailed parts, supply of tooling, provision of consumables etc.. It is essentially a detailing of the various activities to be undertaken, which ultimately results in manufacture and supply of the airworthy aircrafts. In addition, the applicant is also required to provide support activities in terms of clause 2.1 of scope of work. Support, as per clause 1 of the contract is defined as activities & obligations of the applicant in relation to the after sales activities and maintenance of aircraft. The applicant is also required to provide service of maintenance of FIM and tools belonging to



Airbus even after the sale of aircrafts and as stated already, support, post sale of the aircrafts.

34. Further clauses 5.2 [warranties], 7.3.6 [title and risk], 7.4.1 [acceptance certificate], and 11.1 [termination of contract], clearly depict that though the essential scope is supply of aircrafts in airworthy condition, the title and risk is transferred only on issuance of acceptance certificate by Airbus.

35. We find that the contract entails both supply of goods, viz aircrafts as well as support services. We find that the supply of aircraft is the principal supply and the support services as listed out supra is only incidental and ancillary to the principal supply of the aircraft & that the completion of services in isolation will not result in discharge of the obligations under the contract. Further, whether the composite supply is naturally bundled can be examined from the following parameters i.e.

- The general perception is that the aircraft manufacturer also provides support services;
- Aircraft manufacturers provide support services in conjunction with the supply of complete airworthy aircraft;
- That for effective enjoyment of supply of aircrafts, providing support services is a must;
- That the contract herein has a single contract price charged by the applicant for both supply of 40 airworthy aircrafts & provision of support services; that the combined provision of both goods & services is integral in fulfilling the scope of the work of applicant.

We therefore hold that the supply of aircrafts & provision of support services are naturally bundled & supplied in conjunction with each other in ordinary course of business & hence in terms of section 2(30) of the CGST Act, the aforesaid said supply is a composite supply.

36. Even otherwise in the instant case, the applicant's supply involves goods i.e. aircrafts and maintenance etc which is a service. The contractual agreement between the applicant and Airbus requires the applicant to supply the aircrafts and provide for its maintenance etc. The applicant therefore is engaged in two taxable supplies. What is pivotal is that the supply of service is possible only when the goods i.e. aircrafts are supplied. Hence, we are of the opinion that the contract is a composite supply which are naturally bundled and supplied in conjunction wherein the principal supply is that of aircrafts.



37. The applicant has relied on a plethora of judgements. We find it apt to quote relevant extracts from one of the judgement viz. The Central India Machinery Manufacturing Company Ltd & Ors [1977 (4) TMI 150 –SC]

Whether on the facts of this case, the contract dated 15-6-1968 between the Union of India and the Central India Machinery Manufacturing Company Ltd. (Wagon & Structural Division) Bharatpur (hereinafter called the Company) for manufacture and supply of wagons, was a contract of sale or work contract, is the principal question that falls to be determined in this appeal by certificate, filed by the Union of India against a judgment dated January 31, 1969 of the High Court of Rajasthan.

The broad criteria for distinguishing between these two types of contracts have been neatly summed up in Halsbury's Laws of England, (3rd Edn., Vol. 34, page 6) thus:

"A contract of sale of goods must be distinguished from a contract for work and labour. The distinction is often a fine one. A contract of sale is a contract whose main object is the transfer of the property in and the delivery of the possession of, a chattel as a chattel to the buyer. Where the main object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one, for work and labour. The test is whether or not the work and labour bestowed end in anything that can properly become the subject of sale; neither the ownership materials, nor the value of the skill and labour as compared with the value of the materials is conclusive, although such matters may be taken into consideration in determining in the circumstances of a particular case, whether the contract is in substance one for work and labour or one for the sale of a chattel."

Let us now apply the above criteria to the contract in question. The contract is expressly one for the manufacture and supply of wagons for a price. Price has been fixed taking the wagon as a unit. Payment of the price is made for each vehicle on its completion and delivery by the contractor to the Purchaser, who is described as the Union of India acting through the Railway Board. Such payment is made in two instalments, viz., 90 per cent of the value of the vehicle on completion against an 'On account' bill, together with the Completion Certificate from the Inspecting Officer appointed by the Railway Board, and the balance of 10 per cent after delivery. If clause (1) of the Standard Condition 15 is not inconsistent with anything in the Special Conditions, and as we shall presently notice it is not so--it clinches the issue in as much as it declares in unequivocal terms the intention of the contracting parties that on payment of the 90 per cent of the value, 'the vehicles in question will become the property of the purchaser.' Prima facie, the contract in question has all the essential attributes of a contract of sale of moveable. That is to say, here is an agreement to sell finished goods manufactured by the Sellers (Company) for a price, the property in the goods passing to the Purchaser, on completion and delivery pursuant to the agreement.

The prices quoted under the present contract, is qua each aircraft. The ratio therefore is applicable. However, the differentiation is that the contract under question is of supply of aircrafts along with provision of support services. It is on this background that we have held that the supply is a composite supply wherein the principal supply is supply of aircrafts.



38. Now we move on to the **second question** posed before us i.e. given the nature of the activities undertaken by the Applicant under the contract, what will be the appropriate classification and rate of tax of the said supply.

39. Before dwelling on to the subject, it would be prudent to reproduce the relevant portion of the judgement of the Hon'ble Supreme Court in the case of Mohit Minerals (P) Ltd. [Civil Appeal No. 1390 of 2022], delivered on 19.5.2022, viz

135. Section 2(30) of the CGST Act defines "composite supply" as

"(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration. Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

136. Section 2(30) of the CGST Act clearly provides that a transaction may have two or more taxable supplies, where one of them is a principal supply. The illustration to Section 2(30) further clarifies that a transaction such as the CIF contract for supply of goods reflects a composite supply under the CGST Act, where the principal supply is the supply of goods.

137. The tax liability on composite supply is provided under Section 8 of the CGST Act.

"8. Tax liability on composite and mixed supplies.—

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax." (emphasis supplied)

Section 8 of the CGST Act provides that the tax liability on a composite supply which comprises of two or more supplies, will only be levied on the 'principal supply'. In a CIF transaction, the principal supply, according to Section 2(30), is supply of goods. Thus, the tax would be levied as if the transaction was one of supply of goods.

143. The provisions of composite supply in the CGST Act (and the IGST Act) play a specific role in the levy of GST. The idea of introducing 'composite supply' was to ensure that various elements of a transaction are not dissected and the levy is imposed on the bundle of supplies altogether. This finds specific mention in the illustration provided under Section 2(30) of CGST Act, where the principal supply is that of goods. Thus, the intent of the Parliament was that a transaction



includes different aspects of supply of goods or services and which are naturally bundled together, must be taxed as a composite supply.

145. This Court is bound by the confines of the IGST and CGST Act to determine if this is a composite supply. It would not be permissible to ignore the text of Section 8 of the CGST Act and treat the two transactions as standalone agreements. In a CII contract, the supply of goods is accompanied by the supply of services of transportation and insurance, the responsibility for which lies on the seller (the foreign exporter in this case). The supply of service of transportation by the foreign shipper forms a part of the bundle of supplies between the foreign exporter and the Indian importer, on which the IGST is payable under Section 5(1) of the IGST Act read with Section 20 of the IGST Act, Section 8 and Section 2(30) of the CGST Act. To levy the IGST on the supply of the service component of the transaction would contradict the principle enshrined in Section 8 and be in violation of the scheme of the GST legislation. Based on this reason, we are of the opinion that while the impugned notifications are validly issued under Sections 5(3) and 5(4) of the IGST Act, it would be in violation of Section 8 of the CGST Act and the overall scheme of the GST legislation. As noted earlier, under Section 7(3) of the CGST Act, the Central Government has the power to notify an import of goods as an import of services and vice-versa:

“7. Scope of supply

[...]

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)]/16, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.” PART D 149 No such power can be noticed with respect to interpreting a composite supply of goods and services as two segregable supply of goods and supply of services.

No such power can be noticed with respect to interpreting a composite supply of goods and services as two segregable supply of goods and supply of services.

[emphasis supplied]

40. The applicant has stated that the aircrafts are classifiable under CTH 8802 & will attract GST @ 5% in terms of notification No. 1/2017-IT (Rate) [entry no. 244] dated 28.6.2017. CTH 8802, is reproduced below viz.

8802	**OTHER AIRCRAFT (FOR EXAMPLE, HELICOPTERS, AEROPLANES), EXCEPT UNMANNED AIRCRAFT OF HEADING 8806			
8806	<i>- Helicopters :</i>			
8802 11 00	-- Of an unladen weight not exceeding 2,000 kg.	u	**2.5%	-
8802 12 00	-- Of an unladen weight exceeding 2,000 kg.	u	**2.5%	-



8802 20 00	- Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg.	u	#2.5%	-
8802 30 00	- Aeroplanes and other aircraft, of an unladen weight exceeding 2,000 kg. but not exceeding 15,000 kg.	u	#2.5%	-
8802 40 00	- Aeroplanes and other aircraft, of an unladen weight exceeding 15,000 kg.	u	#2.5%	-
8802 60 00	- Spacecraft (including satellites) and suborbital and spacecraft launch vehicles	u	10%	-

Likewise, relevant extracts of notification No. 1/2017-IT (Rate) dated 28.6.2017, is reproduced below for ease of reference viz

Rate of IGST on specified goods — Schedule I to VI

In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the integrated tax of-

(i) 5 per cent. in respect of goods specified in Schedule I,

(ii) to (vi)

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

SCHEDULE I - 5%

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
(1)	(2)	(3)
244.	8802	Other aircraft (for example, helicopters, aeroplanes), other than those for personal use.

Since we have already held that the contract with Airbus for supply of aircraft is a composite supply, and that the principal supply being supply of goods viz aircraft, we hold that aircrafts are classifiable under CTH 8802 & will attract GST @ 5% in terms of notification No. 1/2017-IT (Rate) dated 28.6.2017 [entry no. 244].

41. Moving on to the **next question** wherein the applicant has sought ruling about the value to be adopted, for the purpose of payment of GST. For the sake of ease of reference, we reproduce the Section 15 which deals with valuation under CGST.

Section 15. Value of Taxable Supply.- [relevant extracts]

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both.



the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

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

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

- (a); and
- (b)

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

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

Explanation. - For the purposes of this Act,-

- (a) persons shall be deemed to be "related persons" if-
 - (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

42. The applicant in his submission has stated that in terms of section 15 [reproduced *supra*], they are not related with Airbus; that there is no consideration flowing from Airbus to the applicant other than the contract price agreed between them; that there are various parts, components & materials which cannot be indigenized & are provided by Airbus as FIM during the contract; that the ownership of the FIM shall vest with Airbus. The applicant



has relied upon various clauses of the contract, to contend that value of FIM should not form part of transaction value. For ease of understanding, the relied upon clauses are reproduced below:

- Clause 1 [Definition of FIM [already reproduced in para 5 supra];
- Clause 4.2 [already reproduced in para 5 supra];
- Clause 1.3 of SoW [Statement of Work]

1.3 BASIC WORKSHARE

The main activities to be performed by each Party are as follows:

- *The supplier shall:*
 1. *Produce 40 A/Cs C-295 according to the established workshare and delivery plan*
 2. *Provide Aircraft painting as a subcontracted activity of the Supplier*
 3. *Provide the facilities, standard hand-tooling, standard troubleshooting tools and GSE equipment*
 4. *Provide the production & all support function: manufacturing engineering, quality, production control, managing staff, logistics, facilities, MRB, change control management, general services, etc*
 5. *Prepare and control the operative production plan (MRP) according Program Integrated Master Schedule delivered by airbus PMO*
 6. *Manage overall Logistics (including Customs clearance), the supplier supply chain and the supplier warehouse logistics requirements*
 7. *Provide quality inspection capabilities except flight test*
 8. *Perform the work under Airbus DS's quality systems or Airbus S QA authorization*
 9. *Perform quality assurance*
 10. *Provide Metrological control capabilities*
 11. *Manage all production work share, corrective actions, & recovery plans*
 12. *Provide consumables (ie sealant), standards & other elements required for manufacturing.*
- *Airbus DS shall*
 1. *Provide all the C-295 special tooling for MCAs & Final assembly Line*
 2. *Manage the Program at OEM level*
 3. *Support and Coordination to prepare and monitor & track the suppliers operative production plan (MRP)*
 4. *Airbus DS will provide the technical data package to the applicable configuration*
 5. *Perform Audit & Assurance Quality of the Supplier production workshare under Airbus DS's Quality System*
 6. *Manage logistics for its workshare*
 7. *Manufacturing Engineering support*
 8. *Provide required kits & MCAs according workshare*
 9. *Provide OoS parts as free of charge*
 10. *Provide A/c equipment as free of charge (to be annexed to the SoW at T0 + 12)*
 11. *Perform industrial flights*
 12. *Deliver the A/C to customer*
 13. *Act in front of the airworthiness authority*



14. Provide relevant classroom and OJT training in Spain.

- Clause 2.3.7 of SoW

2.3.7 Material Management

All suppliers for the C-295 program shall fulfil the requirements of CASA 1033-01. The list of C-295 approved suppliers under the Supplier responsibility will be always accessible to Airbus DS according is defined in annex S 'Manufacturing & Supply Chain Management'.

43. A bare reading of the contract reveals that the contention put forth of the applicant not being related with Airbus & that there is no consideration flowing from Airbus to the applicant other than the contract price agreed between them, is true. However, what is pivotal herein is that certain significant parts of the aircraft to be manufactured by the applicant, is supplied as FIM [free issue materials] to the applicant by Airbus. Will the value of FIM form a part of the transaction value, to be determined under section 15 of the CGST Act, 2017? Section 15(2)(b), reproduced *supra*, states that value 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. However, in this case, the applicant relying on clause 1 [which defines FIM] and clause 4.2 of the contract and clauses 1.3 and 2.3.7 of the SoW, is of the view that since the FIM were supplied free owing to a contractual obligation and also on account of the difficulty faced in indigenization, this will not form part of the value of supply. However, we find that the issue of valuation of free supplies under GST has been decided by the Hon'ble Chhattisgarh High Court in the case of M/s. Shree Jeet Transport [Writ Petition (T) No. 117/2022], on 17.10.2023, the relevant extracts of which are reproduced below viz.

1. (a) This instant petition is filed to challenge the order dated 28-2-2022 (Annexure - P/5) passed by the Appellate Authority for Advance Ruling, Chhattisgarh (for brevity 'the AAAR') as no decision was rendered in terms of Section 101 (3) of the Central Goods and Service Tax Act, 2017 (for brevity 'the CGST') and the Chhattisgarh Goods and Service Tax Act, 2017 (for brevity 'the CHGST') and the order dated 4-1-2021 (Annexure - P/6) passed by the Authority for Advance Ruling, Chhattisgarh (for brevity 'the AAR') to be illegal wherein it was held that Goods and Services Tax (for brevity 'the GST') would be leviable on the value of diesel provided by the service recipient Free of Cost (for brevity 'FOC').

(c) The petitioner is a Goods Transport Agency (for brevity 'the GTA') service provider, As per the proposed terms of agreement, it was agreed that the petitioner would provide trucks/trailers along with driver for transportation of goods belonging to the service recipient on a day-to-day and non-exclusive basis and further as per Clause 2 of the draft agreement, the service recipient will be responsible for providing fuel in the trucks/trailers supplied by the petitioner on free of cost basis (FOC) thereby it was agreed that com



of fuel would not be the responsibility of the petitioner, who is a GTA, in the scope of service recipient.

2.2 It is expressly clarified that the value of fuel which is in the scope of the Company shall by no means be interpreted as additional consideration payable for the transportation service provided by the Transporter or having been provided to the vehicle in lieu of freight. The said fuel would be issued by the Company for exclusive usage, as a consumable, in the underlying transportation only and the ownership of the fuel would at no point be transferred to the Transporter or to the vehicle engaged.....

7. The question falls for consideration is that
"whether diesel filled by the service recipient FoC in the truck of the GTA can be added to value of supply being rendered by the GTA for the purpose of levy of GST under the CGST Act, 2017?"

13. The AAR by its order dated 4-1-2021 held that the cost of fuel though is not included in the scope of work of the petitioner and the diesel is provided FOC by the service recipient would nevertheless would be added to the value of taxable service for the purpose of GST on application of Section 15 (1) read with Section 2 (31) of the CGST. It was further held that since fuel was an essential ingredient without which the transport service cannot be rendered, the cost of fuel cannot be ignored.

14. The petitioner having not satisfied with such ruling, filed an appeal before the Appellate Authority i.e. AAAR wherein the AAAR passed an order dated 28-2-2022. The Member of the CGST (Central) upheld the view of the AAR and held that diesel, which is filled FoC by the service recipient in the engaged chartered (dedicated) vehicles as per the proposed draft agreement would form part of value of supply of service charged by the appellant and applicable rate of GST was to be leviable whereas the SGST Member held that considering the provisions of Section 15(2)(b) which provides that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply does not include FoC diesel for the simple reason that the liability to pay for the diesel as per draft contract is of service recipient.

20(c) In the case in hand, as per the proposed agreement/contract, the fuel (diesel) is not in the scope of the service of the petitioner. The agreement purports that the fuel would be free of cost basis for transportation of the goods and fuel would be filled by the service recipient for transportation.

21. The very definition and existence of the petitioner who is to provide transportation service, by plain and simple interpretation would point out the entire business and survival is premised and interdependent on the vehicles for transportation of goods. The obvious factor would be the vehicle cannot run without fuel. Therefore, the design of the entire activity of GTA is based on supply of fuel to the respective vehicles. In absence of fuel, the the entire business activity would stand arrested to provide service. Therefore, the need of fuel is glued for survival of a GTA. If the GTA has stitched up to provide service by obtaining fuel on FOC basis by contract with recipient Company, this phenomenon would transcend the activity which reflects a broader shift in name of contract, therefore, the revenue has power to remove the lid to find out the object and purpose.

22. In the instant case, the scope of supply as defined in section 7 of the GST Act purports "all forms of supply of services" made or agreed to be made for consideration "in the course" or "furtherance of business". The words used in Section 7(1)(a), "in course" or "furtherance of business" would point out about service to be provided by the transporter as a GTA. The contention of petitioner that the "consideration" is required to be confined as per the terms of agreement cannot be given a literal interpretation. Section 2(31) of the CGST 2017 mandates that "consideration" in relation to supply of goods or services includes - (a) any payment whether in money or otherwise made or to be made; (b) monetary value of any act or forbearance for the inducement of supply of goods or services. Reading of section 2(31) along with scope of supply as defined u/s 7(1)(a) makes it clear that the petitioner who is a GTA wanted to transport the goods for recipient. The recipient is not a GTA or engaged in business of transport. Consequently it is the petitioner GTA "in course" or "furtherance of business" has agreed to supply the goods or service for consideration. When it is the primary business of the GTA, in order to allow running the vehicles by fuel, it is a potential combination. If that part of responsibility is delegated by way of an agreement to the recipient, in such a case, the recipient would step into the shoes of GTA as its component and would be playing central role in setting narratives.



23. Section 7 of the Act explains that expression "supply" would include all forms of supply made or agreed to be made for consideration in furtherance of business by the supplier. So the nature of business would be the decisive factor and if such consideration is shifted by entering into agreement, it would be encroaching upon turf of G.T.A., and would only be a collective enthusiasm and that statutory liability cannot be evaded. As has been laid down by the Supreme Court in *CLP India Pvt. Ltd. Versus Gujarat Urja Vikas Nigam* (2020) 5 SCC 185, the parties by agreement cannot over-ride the statutory provisions in relation to matter of tariff.

25. Section 15(2)(b) says that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but it has been incurred by recipient of supply and not included in the prices actually paid. This section imposes statutory obligation. The very existence of petitioner as GTA is for goods transport. Naturally, it would be the obligation for the GTA to run the vehicles and this factor needs a merited attention. The provision of Section 15(2)(b) has been tried to be by-passed by the agreement wherein the diesel was agreed to be supplied FOC by service recipient to the GTA. If we look into the facts by other angle, the expenses to fill the diesel in vehicle in furtherance of supply of service in normal condition was to be incurred by the GTA and it was his liability to fulfill such supply. However, in this issue, the expense of fuel has been agreed to be incurred by the recipient by agreement and value of diesel is excluded to evaluate the value of supply. The statutory provision of Section 15(2)(b) takes within its sweep to value, which is incurred by recipient. Therefore even by agreement in between the GTA and service recipient, this statutory liability cannot be sidelined and the merited attention of the statute sets a red line. Therefore, in the instant case, the value of service agreed to be provided necessarily will depend on the nature of service and the nature of business. The petitioner who can survive to run the business of goods transport on fuel therefore cannot claim that the diesel is supplied by the service recipient free of cost, as such, it cannot be included as the fuel is an integral part used in providing the Transportation Service and is essential for GTA provider. Without fuel the entire business of GTA cannot survive. Therefore, fuel being an integral part cannot be bifurcated to over come a tax liability.

26. Another submission is made that the model GST law proposed to include in Section 15(2)(b) of CGST Act "the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued". Therefore by such provision, free supply was included to be valued. However, in the final GST law, the provision of free supply by the service recipient was excluded. It is contended that the transaction value was an inclusive part in the proposed Model GST law under clause (b) Section 15(2) of the CGST Act. The provision to be added as per model GST Law in clause (b) of Section 15 (2) reads as under : "(b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or being valued...."

The submission that free supply by the service recipient has been excluded as per final GST Law. Therefore, the legislative history in the draft GST Law is required to be seen. It is contended that there is a conscious omission by the Legislature to include value of free supply by recipient to evaluate the entire supply. The reference is made to case law reported in (2022) 10 SCC 700 – *Mohit Minerals Pvt. Ltd* (supra).

27. However, when we examine the final GST Law, Section 15(2)(b) includes that any amount that the supplier is liable to pay in relation to such supply but has been incurred by the service recipient and not included in the prices paid or to be payable is to be taken into account to value the service answers this query. The Legislature has categorically enveloped such kind of supply within the ambit unless exempted by any provision. Therefore, the emphasis cannot be made at this stage while interpreting the provisions of Section 15(2)(b) of the GST Act, 2017 with the proposed GST Law specially taking into consideration the nature of business by GTA, the service provider.

30. Again when we examine the nature of business of the petitioner, who is a GTA, the nucleus of survival of business shows that the business of petitioner entirely survives on transportation. Since the transportation inter-alia is an inter-dependent on supply of fuel, it would be a crucial component to run the business of GTA. If such integral part of survival of reins are held by service recipient, in such a case, it would be actually doing the substance addition of GTA survival. Therefore, the Circular dated 8th June 2018 on which the petitioner



tried to rely upon would not be of any help especially considering the nature of business and the provisions of Section 7(1) (a) and 15(2)(b) of CGST Act.

31..... In view of the observations made in foregoing paragraphs the initial order passed by the AAR on 04.01.2021 shall revive and it is observed that though the diesel was provided free of cost by the service recipient, it would nevertheless be added to the value for the purpose of GST.

[emphasis supplied]

44. The judgement is applicable to the facts of the present dispute, in light of the reasoning adopted in the judgement, as listed out in paras 21 to 31, reproduced *supra*, more so since the FIMs supplied by Airbus, as per the applicant himself are crucial/critical components of the aircraft.

45. The issue therefore is no longer *res integra* having been decided by the Hon'ble High Court of Chhattisgarh. Following the judgement of the Hon'ble High Court we hold that the value to be adopted for the purpose of payment of GST in respect of 40 aircraft will include the supply made free of cost by Airbus i.e. will include the value of FIMs also.

46. The **last question** pertains to the time of supply for payment of GST. The applicant states that in terms of section 12(2) of the CGST Act, liability on supply of goods shall arise on the date of issue of invoice or on the last date to issue invoice, whichever is earlier. The applicant submits that they are not supposed to pay GST on receipt of advance in the case of supply of goods. They have also relied upon notification No. 66/2017-CT dated 15.11.2017 to substantiate this argument.

47. Section 12 of the CGST Act, 2017, states as follows:

Section 12. Time of Supply of Goods [relevant extracts]

(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates.



- (a) the date of issue of invoice by the supplier or the last date on which he is required, under ¹[****] section 31, to issue the invoice with respect to the supply; or
- (b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.- For the purposes of clauses (a) and (b), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

Notification No. 66/2017 –Central Tax
New Delhi, the 15.11.2017.

(E): In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) and in supercession of notification No. 40/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.1254(E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supercession, the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

[F. No. 349/58/2017-GST(Pt)]

(Dr. Sreeparvathy S.I.)

Under Secretary to the Government of India

A conjoint reading of section 12, reproduced *supra*, with notification No. 66/2017-CT, clearly leads one to a conclusion, that provision on payment of tax on advances received on supply of goods, stands deleted vide notification No. 66/2017-CT dated 15.11.2017. Therefore, we agree with the contention of the applicant that they are not required to pay GST on the receipt of advance in the case of supply of goods.



48. In the light of the above, we rule as under:

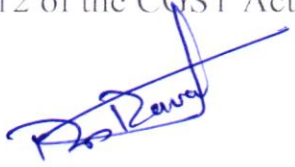
RULING

(i) The nature of supply under the contract between the Applicant and Airbus is a composite supply in terms of section 8 of the CGST Act, 2017 wherein the principal supply is supply of aircraft (i.e., 'supply of goods'.

(ii) The aircrafts are classifiable under CTH 8802 & will attract GST @ 5% in terms of notification No. 1/2017-IT (Rate) dated 28.6.2017 [entry no. 244].

(iii) The value to be adopted for the purpose of payment of GST will include the supply made free of cost by Airbus i.e. will include the value of FIMs also.

(iv) The time of supply for payment of GST will be in terms of Section 12 of the CGST Act, 2017.



(RIDDHESH RAVAL)
MEMBER (SGST)

Place: Ahmedabad

Date: 06.12.2023



(AMIT KUMAR MISHRA)
MEMBER (CGST)

