

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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Atal Nagar, District-Raipur (C.G.) 492002
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh, the applicant, a registered Service provider, GSTIN- 22AKDPB5992P1ZU, as to whether diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service charged by the applicant and whether GST would be leviable on value of diesel filled free of cost by the service recipient or otherwise under GTA service.

Read :-Application dated 04/08/2020 from Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh GSTIN- 22AKDPB5992P1ZU.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/12/2020

Raipur Dated 04/01/2021

Shri Arvinder Singh Bhatia, M/s Shree Jeet Transport, 127, Ward 15, Kharora, Raipur, Chhattisgarh [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling as to whether diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service charged by the applicant and whether GST would be leviable on value of diesel filled free of cost by the service recipient or otherwise under GTA service.

2. Facts of the case:- The applicant, is a service provider engaged in transportation of goods of various companies / parties and they intend to enter into a contract with the companies / parties (service recipient) and as per terms of contracts, High Speed Diesel



(fuel) filled and consumed in the engaged dedicated (chartered) vehicles used for transportation under GTA service will be under the scope of the service recipient and freight is paid by the companies / parties, excluding diesel. The applicant thus seeks advance ruling on the above said points, considering that the diesel filled and consumed by the recipient company would not be included in the amount charged by the applicant in tax invoice issued under Section 31 of CGST Act, 2017.

3. Contentions of the applicant:- The applicant, is a GTA service engaged in providing services of transportation of goods by road and the applicant intends to enter into a contract with the service recipient for providing GTA services. As per the draft agreement, the applicant is required to provide trucks / trailers on a day to day requirement on a non-exclusive basis and as per the scope of service of the applicant is to provide the truck /trailer along with the driver and report at the unit of the service recipient. The fuel is in the scope of the service recipient and not in the scope of work of the applicant. The applicant's further contentions on the issue can be summarized as under:-

- I. The applicant will be issuing consignment note /bilty for each vehicle load / consignment. The consignment note, inter-alia, will bear information such as the consignor, consignee, name of goods (raw material) being transported, quantity of material loaded for transportation.
- II. On completion of the transport service, the applicant will raise invoice, charging freight on the GTA service provided. The invoice will carry the details of consignment notes for the GTA service provided.
- III. The applicant will be accounting the freight charged from the service recipient as business revenue. Further the applicant will be charging GST (under forward charge mechanism) on the freight so charged. The applicant will not be doing any accounting for the diesel filled in the truck by the service recipient as the same has not been provided to the applicant and not being in the scope of the applicant.
- IV. GST is an activity-based tax and is leviable only on the value addition made by the supplier. Section 9 of the CGST Act is the charging section and the charge is only on the supply of goods / services on the value determined under Section 15. The applicant will be charging an amount for the value addition undertaken by it. Charge of GST on the free cost fuel component cannot arise at all under GTA service. As the cost of fuel is not under the contractual obligation of the applicant/GTA service provider, value of the same cannot be included for the purpose of determination of GST at the end of the applicant, and hence the business process test cannot be made applicable to the issue at hand. Further that the tax authorities are not permitted to enter into the prism of a businessman to decide how the commercial terms of the transaction or the business process is to be undertaken.
- V. That, in the draft GST law the provision with regard to inclusion of FOC material provided by service recipient/buyer had been omitted, which shows that GST is not leviable on FOC goods which is not in the scope of the service provider.



- VI. 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 and that 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. As the contractual liability of the fuel is not that of the applicant, cost of fuel cannot be included in the scope of supply made by the applicant. Further that it stands settled in service tax laws that value of diesel supplied free of cost by the client in the course of providing service, the said value cannot become part of GTA service. That, the matter is covered by circular no. 47/27/2018-GST dated 8.6.2018, wherein it has been clarified in case of tools, moulds and dies which are in the scope of buyer and are provided on FOC basis to the supplier for use in the manufacturing goods, then same will not form part of the transaction value and no GST will be payable thereon.
- VII. That, even otherwise the transaction is revenue neutral as service recipient is eligible to take input tax credit of the GST charged by the applicant on the GTA service provided. However, in terms of section 15(2)(b), it will be erroneous and contrary to law for the applicant to charge GST just because recipient is entitled to ITC.
- VIII. That, onus even if put on the applicant to include the cost of diesel would be an impossibility of compliance as the applicant is not privy to the cost of diesel.
- IX. That, the advance ruling in the matter of Shri Navodit Agarwal 2019(4)TMI 1402 is inapplicable in the applicants case as the facts and situations of the said case was distinct and different.
- X. The applicant in support of their above contentions, cited reference to the following case laws:-
- i. Sheen Golden Jewels vs. STO 2019(62)GSTR 207
 - ii. Shiv Raj Gupta vs CIT 2020 (7)TMI 544
 - iii. AAR Karnataka: M/s Nash Industries (I) Pvt. Ltd 2019(3)TMI 435
 - iv. Lear Automotive India Pvt. Ltd 2018(12)TMI 766
 - v. Karamjeet Singh and Co. Ltd Vs. CCE 2017(9)TMI 1125 CESTAT
 - vi. 2018(7)TMI 442 SC order
 - vii. RK Transport Company Vs CCE 2020(11)TMI CESTAT New Delhi
 - viii. Jain Carrying Corporation vs CCE 2019(3)TMI 864
 - ix. CST vs Bhayana Builders P Ltd 2018(2)TMI 435
 - x. UOI vs Intercontinental Consultants and Technocrafts Ltd. 2018(3)TMI 357

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant, as requested by them and accordingly, Shri Vivek Sharma, authorized representative of the applicant appeared before us for hearing on 6.11.2020 in person. The applicant was earlier extended the opportunity of personal hearing through virtual mode on 21.10.2020 and acceding to their request, they were again granted personal hearing in the matter on 6.11.2020 in person. The authorized representative of the applicant reiterated their contention that valuation under Section 15 of CGST Act does not include the present transaction and that the contractual liability of the fuel is not that of the



applicant, therefore cost of fuel cannot be included in the scope of supply made by the applicant. Shri Vivek Sharma, also furnished a written submission dated 6.11.2020, which has been taken on record.

5. The legal position, analysis and discussion:-At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

5.1 As per Section 7 (1) of CGST Act:

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

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

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

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

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

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

Consideration in relation to the supply of goods or services includes

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

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



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

5.3 Section 15 of Central Goods and Services Tax Act 2017 stipulates about the Value of taxable supply as under:

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

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

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

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

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

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

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

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

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

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

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

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

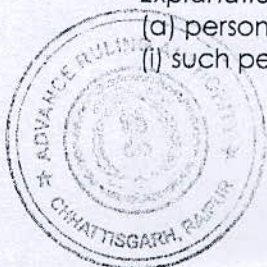
(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.⁷

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

Explanation.—For the purposes of this Act,—

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

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



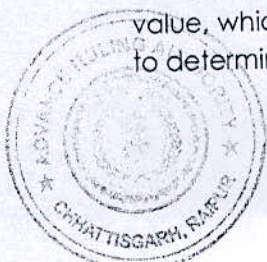
- (ii) such persons are legally recognized partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly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

5.4 In the instant case, the applicant, a GTA is engaged in providing services of transportation of goods by road and it intends to enter into a contract with the service recipient for providing GTA services. Under the draft agreement, the applicant is required to provide trucks / trailers on a day to day requirement on a non-exclusive basis and as per the scope of service proposed the applicant is to provide truck /trailer along with the driver and report at the unit of the service recipient and the fuel is in the scope of the service recipient and not in the scope of work of the applicant. It is in this back drop the applicant is seeking advance ruling as to whether diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of supply of service charged by the applicant and whether GST would be leviable on value of diesel filled free of cost by the service recipient or otherwise under GTA service. In this context, the applicant is of the view that valuation under Section 15 of CGST Act does not include the present transaction as the contractual liability of the fuel is not of the applicant and therefore cost of fuel cannot be included in the scope of supply made by the applicant.

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

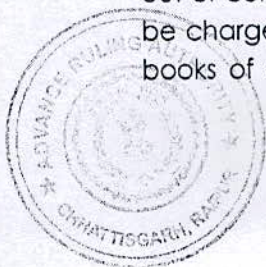
5.5 In terms of the provisions of law as envisaged under Section 15 (1) of CGST Act, 2017, to ascertain as to whether the value of a supply of services is the transaction value, which is the price actually paid or payable for the said supply of services and as to determine whether the value of taxable supply paid by recipient to the supplier is the



'sole consideration', it is necessary to refer to the definition of the term 'consideration'. The term 'consideration' has been defined under Section 2(31) of the CGST Act supra, to mean and include monetary value of any act or forbearance, whether or not voluntary which is made in respect of, in response to or for the inducement of the said supply of goods and/or services. Such consideration can flow from the recipient of supply or any other person and it could be either monetary or non-monetary consideration. Thus Section 15(1) read with Section 2(31) of CGST Act, 2017, stipulates that any monetary value in relation to the said supply for materializing such supply of services is definitely a "consideration" for such supply.

The applicant in the instant case is required to provide trucks / trailers on a day to day basis along with the driver and report at the unit of the service recipient and the fuel for providing such service has been kept within the scope of the service recipient and not in the scope of work of the applicant. Thereafter the applicant will be issuing consignment note /bilty for each vehicle load / consignment. As per Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017, "goods transport agency" or GTA means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. The consignment note, inter-alia, will bear information such as the consignor, consignee, name of goods (raw material) being transported, quantity of material loaded for transportation. It has been contention of the applicant that they will be charging GST (under forward charge mechanism) on the freight so charged and they will not be accounting for the diesel filled in the truck by the service recipient as the same has not been provided to the applicant, not being in the scope of the applicant.

There can be no dispute whatsoever; as regards the fact that fuel forms the single most important factor in rendering Goods Transport Service by a GTA and to visualize a Goods Transport Agency providing Goods Transport service without having any obligation or responsibility towards fuel / fuel cost is inconceivable. Cost of Fuel is definitely a consideration for the said supply as per the definition of "consideration" supra, in the course of furtherance of business and forms the most vital part in the intended supply of goods transport service by a GTA. Goods Transport Agency or GTA provides service in relation to transport of goods by road and to perceive provision of this service without the element of fuel, can in no way be a logical or workable proposition. The provision of free of cost fuel (diesel) here by the service receiver to the applicant GTA, in the proposed agreement appears to be an attempt to circumvent the express provisions of law to escape the liability to tax. There are several court rulings which declare that no mutual terms or conditions of a contract / agreement between two parties involved can override the statutory definition of law, so as to alter the nature of transaction perceived for nonpayment of accruing tax liability. It will definitely not be out of context to mention here that in the intended transaction, the value of diesel will be charged as "expense" by the service receiver and will not go unaccounted in the books of accounts of the service receiver. Further the said provision of diesel to the



applicant by the service receiver would definitely be treatable as an independent "supply" exigible to tax as applicable, had diesel not been out of the scope of levy under GST as of now. Thus, this also appears to be a cause to avoid incidence of tax on the value of the all important ingredient i.e. diesel (fuel), much necessary for the provision of the said service by the applicant GTA. This expenditure on account of Diesel charges in this case by the service receiver, is indispensable and inevitably incurred to provide taxable service and hence, essentially forms part of value of taxable service. Further if the proposed concept of provision of "free of cost diesel" by the service receiver for the instant supply of service of transportation of goods by road that too unaccounted by the service provider GTA, is justifiable it becomes all the more inconceivable to visualize a situation when the service receiver would besides providing free of cost diesel would also be providing "free of cost trucks/trailers" for the instant supply.

Section 9(1) of the CGST Act, 2017 provides that the tax shall be levied on the value determined under Section 15 of the said Act. Section 15(1) of the CGST Act, 2017 stipulates that the value of a supply of goods or services or both shall be the transaction value, which is the *price actually paid or payable for the said supply of goods or services or both* where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Close reading of the above provision would entail that the value of supply shall be the price paid or payable "for the said supply" of goods or services in question. In this context, Hon'ble Apex Court in the case of *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd.* [Civil Appeal No. 2013 of 2014] [2018 (10) G.S.T.L. 401 (S.C.)], which was in the context of erstwhile Service Tax Law observed that "In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot be a part of that valuation as that amount is not calculated for providing such 'taxable service'".

In the light of above pronouncement, it can be seen that aforesaid Section 15(1) of the CGST Act, 2017 provides that value of supply of goods or services should be "for the said supply" of goods and services. The language is GST Act, is similar to Section 67 of the Finance Act, 1994 (before the 2015 amendment) which provided that the value of taxable service shall be the gross amount charged "for such service provided or to be provided". Hence applying the ratio of Hon'ble Apex Court decision (supra), it is clear that in the instant case diesel/fuel being the integral part used in providing the transportation service by GTA in question, as discussed above, cost of the same is the key and accordingly the most decisive and vital factor for arriving at the value for the supply in question.

5.6 We find that to bring home their point of contention that the value of diesel supplied free of cost by the client in the course of providing service cannot become part of GTA service, the applicant have cited reference to the case law of M/s



Karamjeet Singh and Co. Ltd vs CCE 2017(9)TMI 1125 CESTAT, M/s RK Transport Company vs CCE 2020(11)TMI CESTAT, New Delhi, UOI vs Intercontinental Consultants and Technocrafts Pvt Ltd 2018(3)TMI 357 and Commissioner of Service tax vs M/s Bhayana Builders(P) Ltd 2018(2)TMI 1325 SC.

These case laws pertain to the erstwhile service tax period and that too prior to the negative list regime under Service tax provisions, governed by Finance Act, 1994. The case of Karamjeet Singh pertains to the period 2008 to 2012, whereas the case of M/s RK Transport Company pertains to 2008 to 2010 and that of M/s Intercontinental Consultants pertains to the period 2002 to 2007. In the case of Karamjeet Singh the decision was based on pronouncement of Hon'ble Delhi High Court in *Intercontinental Consultants & Technocrafts Pvt. Ltd. v. Union of India* holding therein that that Rule 5(1) of the Service Tax Rules runs counter and is repugnant to Sections 66 and 67 of the Finance Act, 1994 and to that extent it is *ultra vires*. It was thus pronounced in the judgment *supra*, that by including the expenditure and costs, Rule 5(1) of Service Tax Rules, goes far beyond the charging provisions and cannot be upheld and accordingly held that Section 67 of Finance Act, 1994 does not cover the situation where free of cost material are supplied by the recipient of service. We have already discussed in the preceding para, the ratio of this decision of Hon'ble Supreme Court as regards the essentiality of diesel in the instant supply of transportation of goods by road. In the case of Bhayana Builders(P) Ltd 2018(2)TMI 1325 SC it was held by Hon'ble Supreme Court that the value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the *gross amount charged*, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and that the value of free supplies by service recipient do not comprise the *gross amount charged* under Notification No. 15/2004-S.T., including the Explanation thereto as introduced by Notification No. 4/2005-S.T and accordingly not leviable to service tax. Whereas, in the present case in hand, as already discussed in the preceding para, cost of fuel is definitely a consideration for the said supply of Transportation service, as per the definition of "consideration" *supra* in the course of furtherance of business and forms the most vital part in the intended supply of goods transport service by a GTA. Thus the cited reference of case laws by the applicant in their defense is distinguishable and distinct to the facts in hand as discussed above.

The applicant have also cited reference to circular no. 47/27/2018-GST dated 8.6.2018 relating to supply of components by using mould / dies belonging to the component manufacturer. In this context, it is seen that at para 1.3 of the said cited circular it has been clarified that if the contract between OEM and component manufacturer was for supply of components made by using moulds/belonging to the component manufacturer, but the same has been supplied by the OEM to the



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

It is also of utmost importance to point out that, it is not the issue here that diesel, the very vital ingredient having already suffered the incidence of GST, inclusion of its value much essential for the provision of transportation service in question in subsequent supply, would amount to double taxation (diesel / petrol being out of the ambit of GST).

5.7 It is also seen that Hon'ble Tribunal in the case of Subway Systems India Pvt. Ltd vs. Commissioner of S.T, Delhi-II 2019(25)GSTL 465 (Tri-Del.), wherein the appellant party (M/s Subway) were discharging their tax liability qua the royalty amount received from the franchise which was equal to 8% of the total gross sales, but, no liability was being discharged for an amount received equal to 4.5% of the weekly gross sales towards the contribution referred to as subway franchise advertisement fund trust, held that the franchise service is not confined merely to the representational right to sale or manufacture goods or to provide the service but it extends to any process identified with franchiser with respect to the trade mark, service mark, trade name etc. The amount in question is the part of the weekly gross sales being given by the service



recipient to the service provider mutually consenting for the same to be used for the process identified by SSIPL to advertise the subway brand /trade name. Hence it is not simplicitor on advertising service, but is very much the part of the franchise service rather than by the appellant to the franchisees. Hence, definitely qualify for "for such service provided". From the above discussion, we are of the firm opinion that the amount of weekly gross sales @4.5% but for franchise advertisement fund is nothing but the part of the gross value of the contract for providing the franchise service and, hence was equally taxable as 8.5% of the said weekly gross sales is taxable.

Further in the aforesaid case, Hon'ble Tribunal distinguished the findings in Intercontinental consultants and technocrats Pvt Ltd supra, holding that "Similarly, Intercontinental Consultants and Technocrats Pvt Ltd case supra is also not applicable in view of the above discussion about Section 67 of the Act in accordance whereof the valuation of taxable service is nothing more or nothing less than the consideration paid as quid pro quo for the service. As already discussed above even 4.5% of weekly gross value, irrespective of given as franchise advertisement fund, is the value as a quid pro quo service. This decision of CESTAT was also upheld by Hon'ble Supreme Court [2020(32)GSTL J82(S.C)]

The ratio of above judicial pronouncement is squarely applicable to the facts of the case here as well in as much as the valuation of taxable service is nothing more or nothing less than the consideration in entirety, as quid pro quo for the provision of goods transport service by the applicant GTA. Accordingly, cost of fuel is definitely a consideration for the said supply as per the definition of "consideration" supra, in the course of furtherance of business and forms the most vital part in the intended supply of goods transport service by a GTA and therefore would form part of value of supply of service charged by the applicant and GST would be leviable on the value of diesel filled by the service recipient.

Besides above, it is also seen that subsection (4) to Section 15 of the CGST Act, 2017 provides 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. In the instant case, as price doesn't appear to be the sole consideration for the supply in question, in as much as diesel the most important ingredient consumable required for rendering the said supply of service of transportation by the applicant GTA is being provided by the service receiver, resort has to be taken to the valuation rules as prescribed. In this context, it is seen that Rule 27 of Central Goods and Services Tax (CGST) Rules, 2017 provides for ascertainment of value of supply of goods or services where the consideration is not wholly in money, stipulating therein that where the supply of goods or services is for a consideration 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. Here in



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the instant case in hand, where the supply of service being rendered is transportation of goods by road by the applicant GTA, and as diesel being provided free of cost being a consideration not wholly in money, the value of such supply shall be the sum total of consideration in money and such further amount in money as is equivalent to the consideration not in money which is known at the time of supply. This also goes on to substantiate that the cost of diesel provided by service receiver is to be considered for arriving at the GST liability in such supply.

5.8 Thus on the basis of above discussions, we come to the considered conclusion that in the instant transaction by the applicant diesel filled free of cost by the service recipient in the engaged chartered (dedicated) vehicles would form part of value of supply of service charged by the applicant and accordingly GST at the applicable rate would also be leviable on value inclusive of the cost of diesel filled by the service recipient, under GTA service.

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

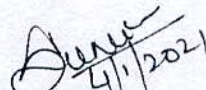
No.STC/AAR/07/2020

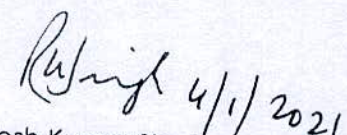
Raipur Dated 4/1/2021

The ruling so sought by the Applicant is accordingly answered as under:

RULING

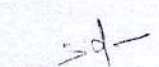
Cost of diesel filled by the service recipient in the engaged chartered (dedicated) vehicles, would form part of value of instant supply of service charged by the applicant and accordingly, GST at the applicable rate would be leviable on the value inclusive of the cost of such diesel under GTA service.



Sonal K. Mishra
(Member)


Rajesh Kumar Singh
(Member)

TRUE COPY

TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR


MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR



O/C