

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI-600006**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/S.98 OF THE
GOODS AND SERVICES TAX ACT, 2017**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A. Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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ORDER No.15/ARA/2024 Dated: 15.07.2024

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

GSTIN Number, if any / User id		33AACCC7454R1Z6
Legal Name of Applicant		M/s. CMA CGM Global Business Services (India) Private Limited (Formerly known as CMA CGM Shared Service Centre (India) Pvt. Ltd.)
Registered Address / Address provided while obtaining user id		8th Floor, 32A and B, Ambit IT Park, Ambattur Industrial Estate, Chennai, Tamil Nadu- 600058
Details of Application		GST ARA – 01 Application Sl.No. 104/2023, dated 01.12.2023
Jurisdictional Officer		State: - Kancheepuram Division, Ambattur Zone, Ambattur Industrial Estate Circle.
Concerned Officer		Centre: Chennai North Commissionerate; Division: Ambattur Division
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	<p>CMA CGM Global Business Services (India) Private Limited (Formerly known as CMA CGM Shared Service Centre (India) Pvt Ltd, is a private limited company incorporated under the Companies Act, 2013 on 7th January 2005 in Chennai, Tamil Nadu and has principal place of business at 8th Floor, 32A and B, Ambit IT Park, Ambattur Industrial Estate, Chennai, Tamil Nadu - 600058.</p> <p>2. The Applicant operates in Information Technology Enabled Services (ITes) sector. It is a captive service provider engaged in providing back-office support services to its parent company CMA CGM SA, headquartered in Marseille France and other group companies located outside India. In India, the Applicant has office presence in the state of Tamil Nadu and Maharashtra. The Applicant operates as Non-Software Technology Park of India (Non-STPI) in the state of Tamil Nadu.</p>
Issue/s on which advance ruling required		1. Admissibility of Input Tax Credit of Tax paid or deemed to have been paid.

Question(s) on which advance ruling is required	<ol style="list-style-type: none"> 1. In the facts and circumstances of the case, whether tax paid on input Services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to ensure safety and security of women employees as per Tamil Nadu Shops and Establishments Act, 1947 is eligible to be availed as input tax credit (ITC)? 2. If eligible, can entire ITC be availed by the applicant for providing the transport facility in all shifts considering the safety of women as mandated under the Tamil Nadu Shops and Establishment Act, 1947? 3. If eligible, can ITC be availed for services received from the date of introduction of proviso to Section 17(5)(b)(iii) of CGST Act, 2017 for the periods up to March 2022?
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1. At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *parimateria* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The applicant submitted a copy of challan dated 10-11-2023 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 16-11-2023 was physically received on 01-12-2023 as mandated under Rule 107A.

3.1. CMA CGM Global Business Services (India) Private Limited (Formerly known as CMA CGM Shared Service Centre (India) Pvt Ltd) (hereinafter referred to as 'the Applicant') is a private limited company incorporated under the Companies Act, 2013 on 7th January 2005 in Chennai, Tamil Nadu and has principal place of business at 8th Floor, 32A and B, Ambit IT Park, Ambattur Industrial Estate, Chennai, Tamil Nadu 600058.

3.2. The Applicant operates in Information Technology Enabled Services (ITes) sector. It is a captive service provider engaged in providing back-office support services to its parent company CMA CGM SA, headquartered in Marseille France and other group companies located outside India. In India, the Applicant has office presence in the

state of Tamil Nadu and Maharashtra. The Applicant operates as Non-Software Technology Park of India (Non-STPI) in the state of Tamil Nadu.

3.3. The Applicant submitted that they strive to ensure diversity in employment opportunities and promotes participation of women in the workforce by providing necessary concessions and amenities and the nature of services being rendered to the customer base outside India with different time zones necessitates the applicant to operate in various shifts throughout the day.

3.5. The Applicant submitted that they are registered under the Tamil Nadu Shops and Establishment Act, 1947 for all the places of business located in Tamil Nadu. That as per the Tamil Nadu Shops and Establishment, 1947 read with the relevant rules and notifications prescribed therein, it is mandatory for the Applicant to provide transportation facility for woman employees working in shifts and provide for adequate protection of safety for women employees (hereinafter referred to as "said statutory requirement"). The Applicant submitted that the relevant extract of the notification (G.O Ms No. 61, Labour Welfare and Skill Development Department (K2) dated 02 June 2022) issued by the government of Tamil Nadu under the said act is as follows:

Para 6 of the Notification:

"Women employees shall not be required to work beyond 8.00 p.m. on any day in normal. Provided that the employer after obtaining written consent of the women employees shall allow them to work between 8.00 pm and 6.00 am, subject to providing adequate protection of their dignity, honour and safety."

Para 7 of the Notification

Transport arrangements shall be provided to the women employee who works in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport"

3.6. The applicant submitted that in compliance with the said mandate, the Applicant procures services of leasing/renting/hiring of motor vehicles for passenger transportation and provides the same to its women employees working in shifts.

3.7. The Applicant further submitted that they have an internal policy wherein it is mandatory (subject to exceptional situations) for woman employees log in from 9:00 PM till 6:00 AM or leaving after 8:00 PM till 6:00 AM to use only the cab facility provided by the Applicant for commuting to/fro, workplace and home. That however, the cab facility is provided by the applicant to women employees workings in all shifts irrespective of login/logout timing.

3.8 The applicant submitted that in compliance with said statutory requirement, they have formulated its internal policy, mandating stringent set of guidelines and rules in connection with the transportation facility for the purpose of ensuring the safety of woman employees. That as per this internal policy, no outsider shall be

permitted to use the transport facility provided by the Applicant and also the said policy requires that, in no circumstances shall a woman employee working in night shift be the last person to be dropped and a male employee shall accompany women employees at all times till the point of drop. That the intention behind the same is to ensure that women employees never travel alone without a fellow male employee accompanying them and in the absence of male employees, adequate security guard will be provided to travel along with women employees. That as matter of principle, the Applicant provides transportation facility to all the Employees who are working in shifts by taking measures to provide adequate protection of the dignity, honor and safety of women employees. That this has been followed with a view to complying with the rules and regulations of Tamil Nadu Shops and Establishment Act, 1947 mentioned above, wherein it is necessary to provide transportation facility with adequate safety for women employees working in shifts.

3.9. The applicant submitted that no recovery of costs is made by them from the employees for transportation facilities provided to them and adequate documentation and record are maintained in connection with the costs incurred for each trip, the details of employees who were part of the trip as well as the location of pick up and drop for each employee.

3.10. The Applicant submitted that they have been receiving services of leasing/hiring/renting of motor vehicles for transportation of employees and paid tax on the same, either on reverse charge mechanism (RM) basis or on payment of consideration to supplier (where the supplier has raised invoice on forward charge basis). The Applicant submitted that with effect from 01 February 2019, a proviso after Section 17(5)(b)(i) of CGST Act, 2017 and TNSGST Act, 2017 was inserted which stated that "input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force." That the Applicant had adopted a position to not avail ITC for tax paid on services of leasing/hiring/renting of motor vehicles for transportation of employees till March 2022 out of abundant caution. That they have started availing Input tax credit from April 2022 onwards and thus have preferred this ruling for a clarity on the eligibility of ITC in respect of GST paid on above-mentioned input services availed by them.

3.11. With regard to the interpretation of law in respect of the questions the applicant quoting Article 368(12A) of the Constitution which defines 'goods and services tax', Section 16, Section 17 of the CGST Act, 2017 and the substitution of provisions made in Section 17 vide CGST(Amendment) Act, 2018 the applicant submitted that prior to the amendment, ITC on Rent A Cab, Life Insurance, Health Insurance was blocked except when it is obligatory for an employer to provide the said services to employees under any law for the time being in force or when it is used for rendering outward taxable supply of same category of goods or services. The applicant submitted that after the said amendment, the term "Rent A Cab" was removed from Section 17 of CGST Act, 2017 and substituted by the term "leasing, renting or hiring of motor

vehicles, vessels or aircraft" in Section 17(5)(b) of CGST Act, 2017 and furthermore, a separate proviso was introduced at the end of Section 17(5)(b) of CGST Act 2017.

3.12. The applicant submitted that prior to the amendment, they have not availed ITC on hiring of motor vehicles due to the ambiguity as to what would constitute "Rent-A-Cab". That the term "Rent A Cab" is not specifically defined anywhere in the act and they had a genuine doubt as to whether the service of hiring of means of transport received by them would fall under the ambit of "Rent A Cab".

3.13. The applicant further submitted that due to lack of clarity regarding the applicability of proviso to whole of section 17(5)(b) of CGST Act, 2017 and out of abundant caution, they had continued to follow the position earlier adopted even after introduction of proviso to Section 17(5)(b) of CGST Act, 2017 till March 2022. The applicant submitted that Circular No. 172/04/2022-GST dated 6 July 2022 was issued wherein it was clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

3.14. The applicant submitted that the said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting held on 21.07.2018. That the intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting held on 21.07.2018, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. That it had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."

3.15. The applicant submitted that on perusal of the above, it is clear that when services mentioned in clause (b) of Section 17(5) are availed by a Company for fulfilling its statutory obligation as an employer, GST paid on the same is allowable as credit and it cannot be considered as blocked credit specified under Section 17(5). That the intention behind insertion of proviso to Section 17(5)(b) of CGST, 2017 was to widen the scope of input tax credit and make ITC available on those goods or services that are obligatory for an employer to provide to its employees under any law for the time being in force. That hence, Input Tax Credit can be availed as long as the conditions prescribed in Section 16 of CGST Act, 2017 are satisfied and the supply is not categorized as blocked credit under Section 17 of CGST Act, 2017.

3.16. The applicant submitted that in the instant case, it is evident that the services of leasing or renting or hiring of passenger transportation vehicles is used in the course and furtherance of Applicant's business. That it is beyond a stretch of doubt that transportation of employees to the place of business is vital for conducting the business activities. The applicant submitted that they are obligated and mandated under the Tamil Nadu Shops and Establishment Act, 1947 to provide safe

transportation facilities to women employees in all shifts. That fulfilment of a statutory compliance i.e. compliance with the provisions of Tamil Nadu Shops and Establishments Act 1947, bestowed upon them is critical to the continued sustenance of business operations.

3.17. The applicant placed reliance on the following judgements / rulings;

i. *RANE TRW STEERING SYSTEM LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE AND CENTRAL TAX, CHENNAI OUTER COMMISSIONERATE (2018(2) TMI 1745 - Madras High Court)*- under the erstwhile CENVAT regime, wherein it was held that an activity that is mandatory under a law satisfies the substantive part of the definition 'input service.

ii. *Gujarat for M/s. Troika Pharmaceuticals Limited (2022 (9) TMI 200 Authority For Advance Ruling, Gujarat)*, where it was held that "ITC of the GST paid on canteen charges is available to the applicant on the food supplied to the employees of the applicant company as such under Section 46 of the Factories Act, it is mandatory to provide canteen facility to the employees". Further, in the said ruling it was stipulated that for eligibility of ITC on GST paid for canteen facility, the burden of GST should not have been passed on to the employees of the Company.

iii. *M/s. Access Healthcare Services Private Limited (2023 (8) TMI 1205-Authority for Advance Ruling, Tamil Nadu)* where it was held that ITC is not blocked on renting of motor vehicles to provide transport facilities to women employees working between 8 pm to 6am as it is obligatory for an employer to provide the same to its employees under the law for time being in force (Tamil Nadu Shops and Establishment Act 1947) as per Section 17(5)(b) of the CGST Act 2017.

3.18. The applicant submitted that the facts and circumstances surrounding the instant case are similar to the decisions cited above. That in the instant case, it is a statutory obligation for the Applicant to provide transportation facility to women employees working in shifts with adequate security. That no recovery of cost has been made by the Applicant for provision of the said facility.

3.19. The applicant submitted that to comply with the requirement of Tamil Nadu Shops and Establishments Act, 1947 and ensure adequate security for woman employees working in various shifts it is necessary to provide transportation facility to women employees working in such shifts and ensure that a male employee or escort accompanies women employee till the point of drop. Therefore, it is the Applicant's view that the GST paid on transportation facility with adequate safety measures provided to women employees as per statutory requirement, would be eligible to be availed as Input tax credit.

3.20. The applicant once again reiterated that ITC was not availed on leasing/renting/hiring of motor vehicles for transportation of women employees prior

to the introduction of proviso to Section 17(5)(b) of CGST Act, 2017 for reasons stated above. That consequently, they believe that ITC should be permitted to be availed for the period prior to F.Y 2022-23 even though the time limit for availing ITC may have elapsed as the Applicant would be at a substantial loss because GST paid on aforementioned services is a sizable amount.

3.21. The applicant further submitted that the issuance of separate clarification through Circular No. 172/04/2022-GST makes it clear that ITC on goods and services procured for satisfaction of statutory obligation by an employer would be eligible from the time of introduction of said proviso and substantial benefit granted by the Act cannot be denied on procedural grounds. That ITC is a form of concession and benefit granted by the legislature to a taxpayer and Section 16 of CGST Act, 2017 makes it clear that except the category of supplies notified in Section 17 of CGST Act, 2017, ITC would be eligible on tax paid on all goods or services or both received by a registered person in the course or furtherance of business.

3.22. The applicant submitted that prior to issuance of Circular 172/04/2022-GST there was genuine doubt and ambiguity surrounding clause b of Section 17(5) of CGST Act, 2017 and the time limit prescribed in Section 16 of CGST Act, 2017 is with respect to the availment of ITC and not the eligibility of ITC itself. That in the instant case, until issuance of Circular 172/04/2022-GST more clarity was awaited on the eligibility of ITC and the ambiguity has been removed altogether only after issuance of the said circular and hence the benefit of ITC cannot be denied on procedural grounds without any fault on the part of the Applicant.

3.23. The applicant placed reliance on judgement pronounced by Supreme Court in the case of Auriay Chamber of Commerce (1986 (25) E.L.T 867-SUPREME COURT) wherein it was held that rules of procedure are hand maids of Justice and not its mistress. If the dealer is not guilty of laches and there is no actual prohibition for refund, one should not get entangled in the cobweb of procedure but do substantial justice.

3.24. That in view of above the Applicant is of view that GST paid on transportation facility with adequate safety measures provided to women employees working in shifts would be eligible to be availed as ITC and the said ITC can be availed from the date of introduction of proviso to Section 17(5)(b)(iii) of CGST Act, 2017 with effect from 1st February 2019.

3.25. The applicant submitted the following;

1. Annexure-A- Notification (G.O. Ms No. 61, Labour Welfare and Skill Development Department (K2) dated 02.06.2022) issued by the Government of Tamil Nadu.
2. Annexure-B- Establishment registration certificate of the Applicant dated-13-07-2021.

3. Annexure-C- Sample copies of agreements entered with the suppliers of the said transportation service.
4. Annexure-D- The copy of relevant extract of Transport policy of the Applicant.
5. Annexure-E- Sample copy of letter of consent of women employees working in shifts vide appointment letter.
6. Annexure-F- A copy of the circular No. 172/04/2022-GST dated 06.07.2022
7. Annexure-G- Press Note on recommendations made during the 28th meeting of the GST council dated 21.07.2018.
8. Annexure-H- Copy of judgment- RANE TRW STEERING SYSTEM LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE AND CENTRAL TAX, CHENNAI OUTER COMMISSIONERATE (2018(2) TMI 1745 - Madras High Court)
9. Annexure-I- Copy of advance ruling- Gujarat for M/s. Troika Pharmaceuticals Limited (2022 (9) TMI 200 Authority For Advance Ruling, Gujarat)
10. Annexure J- Copy of advance Ruling - M/s. Access Healthcare Services Private Limited (2023 (8) TMI 1205- Authority for Advance Ruling, Tamil Nadu) and Copy of Judgment- Auriay Chamber of Commerce (1986 (25) E.L.T 867- SUPREME COURT).

4.1 The applicant is under the administrative control of State Tax Authorities. The concerned authorities of the Center and State were addressed to report if there are any pending proceedings against the applicant on the issue raised by the applicant in the ARA application and for comments on the issues raised.

4.2 The concerned Central authority vide letter GEXCOM/TECH/MISC/4913/2023-TECH dated 24-05-2024, stated that there are no pending proceedings against the applicant on the issues raised in the application and offered the following comments;

- With regard to query no. 1 the Central authority quoted the provisions of sub clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act, 2017 and stated that based on the information provided, it seems that employers may be eligible for the input tax credit to provide transportation arrangements exclusively for female employees during shifts between 8:00 PM to 6:00 AM only.
- With regard to query no. 2 the authority stated ITC may not be allowed for all the shifts.

- With regard to query no. 3 the authority stated that the provisions have been amended through clause (b) of Section 9 of the CGST Amendment Act, 2018, read with Notification No. 2/2019-C.T. dated 29.01.2019, effective from 01.02.2019 so as to allow ITC in respect of goods or services or both specified above if it is made obligatory for an employer to provide the same to its employees under any law for the time being in force. Hence, it appears that provisions have been amended w.e.f 01.02.2019. Therefore, even if it is obligatory for an employer, the Input Tax Credit may not be allowed for the date before 01.02.2019.

4.3 The State jurisdiction Officer viz. the Assistant Commissioner (ST), Ambattur Industrial Estate Assessment Circle reported that with effect from 01.02.2019, ITC has been allowed on leasing, renting or hiring of Motor vehicles, for transportation of persons, having approved seating capacity of not more than thirteen persons (including the driver). However, as per the proviso to Section 17(5)(b), ITC in respect of such goods or services or both shall be available, wherever it is obligatory for an employer to provide the same to employees under any law for the time being in force. Therefore, the ITC is not blocked on Tax paid in Input Services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility and security of women employees working between 8.00 P.M to 6.00 A.M., as it is obligatory as per Tamil Nadu Shops Establishments Act, 1947, only from 28.05.2019, which is the date of notification by the Tamil Nadu Government, in this regard and subject to the provisions of Section 16 of the CGST/ TNGST Act, 2017.

In addition to the above, the state authority has submitted that no Adjudication proceedings are pending or decided against the Taxpayer, relating to the questions raised in the application for Advance Ruling.

4.4 The Joint Commissioner (ST), Intelligence-II also stated that there are no proceedings pending or decided on the issue raised in the application by the Applicant.

5.0 **PERSONAL HEARING**

The applicant, was given an opportunity to be heard on 28.05.2024. Ms. Shrayashree T, Advocate, appeared for the personal hearing as the Authorised Representative (AR) of the Applicant. The AR explained in brief about the business of the applicant and reiterated the submissions made in their application.

The members enquired as to whether records are maintained differentiating the services of leasing / renting/ hiring of motor vehicles used exclusively for men and women employees/ staff. The AR stated that they will be submitting the required details at the earliest. The members enquired if there is anything more to add to the submissions made in the application to which the AR replied that there is nothing more to add.

DISCUSSION AND FINDINGS

6.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the submissions made during the personal hearing and also the submissions made vide their letter 21.06.2024.

6.2 The Applicant is before us seeking Advance ruling on the following questions;

1. *In the facts and circumstances of the case, whether tax paid on input Services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to ensure safety and security of women employees as per Tamil Nadu Shops and Establishments Act, 1947 is eligible to be availed as input tax credit (ITC)?*
2. *If eligible, can entire ITC be availed by the applicant for providing the transport facility in all shifts considering the safety of women as mandated under the Tamil Nadu Shops and Establishment Act, 1947?*
3. *If eligible, can ITC be availed for services received from the date of introduction of proviso to Section 17(5)(b)(iii) of CGST Act, 2017 for the periods up to March 2022?*

6.3. We find that the Applicant is a private limited company and operates in Information Technology Enabled Services (ITes) sector, engaged in providing back-office support services to its parent company CMA CGM SA, headquartered in Marseille France and other group companies located outside India. We find that the Applicant submits that the nature of services being rendered to the customer base outside India with different time zones necessitates the applicant to operate in various shifts throughout the day.

6.4. We find that the Applicant submits that they are registered under the Tamil Nadu Shops and Establishment Act, 1947 for all the places of business located in Tamil Nadu and as per the Tamil Nadu Shops and Establishment, 1947 read with the relevant rules and notifications prescribed therein, it is mandatory for the Applicant to provide transportation facility for woman employees working in shifts and provide for adequate protection of safety for women employees. The Applicant is procuring services of leasing / renting / hiring of motor vehicles for passenger transportation and provides the same to its women employees working in shifts. The applicant also submits that no recovery of costs is made by the Applicant from the employees for transportation facilities provided to them. That the Applicant adopted a position to not avail ITC for tax paid on services of leasing/hiring/renting of motor vehicles for transportation of employees till March 2022 out of abundant caution and started availing input tax credit from April 2022 onwards. We also find that, to the enquiry put forth during the course of Personal hearing as to whether records are maintained differentiating the services of leasing / renting/ hiring of motor vehicles used exclusively for men and women employees/ staff, the applicant vide their letter dated 21.06.2024 submitted that the company has an internal MIS generated by the system, which provides all the details of the travel such as date & time of travel, name gender

of the employee travelling, shift of travel, among other details basis which the vendor generates the invoice. Hence the applicant is before this Authority with queries, listed in para 6.2 above, as to whether the Input tax credit on the above said services received by them is eligible and the date of such eligibility.

6.5. With regard to the first query of the applicant i.e. *In the facts and circumstances of the case, whether tax paid on input Services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to ensure safety and security of women employees as per Tamil Nadu Shops and Establishments Act, 1947 is eligible to be availed as input tax credit (ITC)?*, we find that to answer the same we need to dwell into the provisions of Section 16 and Section 17 of the CGST Act, 2017. Whereas section 16 of the CGST Act, 2017 provides for the eligibility and conditions for taking input tax credit and Section 17 of the said act relates to Apportionment of credit and blocked credits. We find that the provisions of Section 17(5)(b) of the CGST Act, 2017 deals with the issue on hand particularly. Further, we find that, clauses (a) and (b) of subsection (5) of Section 17 has been substituted, with effect from 01.02.2019, vide notification no 02/2019 dated 29.01.2019, as per CGST (Amendment) Act, 2018 (NO. 31 of 2018) dated 29.08.2018. The relevant extract of the provisions of Section 17 of the CGST Act 2017, as amended, is reproduced below for ease of reference;

Section 17. Apportionment of credit and blocked credits.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(b) the following supply of goods or services or both-

*(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **leasing, renting or hiring of motor vehicles, vessels or aircraft** referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

6.6. On perusal of the above provisions of Section 17(5) of the CGST Act, 2017 we find that Input tax credit on services of **leasing, renting or hiring of motor vehicles** shall not be available as the same falls under the category of blocked credit. However, the proviso to the said sub-section provides that the input tax credit in respect of such goods or services or both shall be available, where it is **obligatory** for an employer to provide the same to its employees under any law for the time being in force.

6.7. Further it is seen that CBIC vide circular No. 172/04/2022 dated 06.07.2022, issued by the Ministry of Finance wherein it was clarified that the proviso after sub clause (iii) of clause (b) of subsection (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of subsection(5) of section 17 of the CGST Act. The extract of the said circular is reproduced below;

Sl No	Issue	Clarification
	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<p>1.Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: "Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.</p> <p>2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28thmeeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28thmeeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28thmeeting of the GST Council, dated 21.07.2018.It had been clarified <i>"that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."</i></p>

	3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.
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6.8 In the instant case, as per the provisions of the Tamil Nadu Shops and Establishment Act 1947, it is obligatory on the part of the applicant to provide transport facilities to women employees working beyond 8.00 PM. The Applicant has submitted a copy of the Notification (G.O. Ms No. 61, Labour Welfare and Skill Development Department (K2) dated 02.06.2022) issued by the Government of Tamil Nadu. The relevant paras are reproduced below for ease of reference;

“(6) Women employees shall not be required to work beyond 8.00 P.M. on any day in normal circumstances:

Provided that the employer after obtaining written consent of the women employees shall allow them to work between 8.00 P.M. and 6.00 A.M. subject to providing adequate protection of their dignity, honour and safety.

(7) Transport arrangements shall be provided to the employee who works in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport.

6.9. Hence, in view of the foregoing provisions of the CGST Act, 2017, CBIC Circular dated 22.07.2022 and Notification of the Government of Tamil Nadu dated 02.06.2022, we find that the applicant is eligible to avail input Services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to ensure safety and security of women employees as per Tamil Nadu Shops and Establishments Act, 1947 subject to satisfying and fulfilling the eligibility and conditions provided under Section 16 of the CGST Act, 2017.

6.10. With respect to the second query of the applicant i.e *If eligible, can entire ITC be availed by the, applicant for providing the transport facility in all shifts considering the safety of women as mandated under the Tamil Nadu Shops and Establishment Act, 1947?*, we find that, and as already discussed in para 6.6 above, the Input tax credit on services of **leasing, renting or hiring of motor vehicles** shall not be available as the same falls under the category of blocked credit and the same becomes eligible for availment as per the proviso to the said sub-section which provides that the input tax credit in respect of such goods or services or both shall be available, where it is **obligatory** for an employer to provide the same to its employees under any law for the time being in force. Hence, in the instant case the Input tax credit shall be available to the applicant, **only** on the tax paid on services of **leasing, renting or hiring of motor vehicles for providing transport facilities to women employees alone who are arriving or leaving workplace between 8.00 P.M to 6.00 A.M.** as the same has

been made obligatory vide the Notification of Government of Tamil Nadu cited above.

6.11. Further, with regard to the query no. 3 i.e. *If eligible, can ITC be availed for services received from the date of introduction of proviso to Section 17(5)(b)(iii) of CGST Act, 2017 for the periods up to March 2022?*, we find that though clause (b) of subsection (5) of Section 17 has been substituted, as per CGST (Amendment) Act, 2018 (NO. 31 of 2018) dated 29.08.2018, and brought into effect from 01.02.2019, vide notification no 02/2019 dated 29.01.2019, the Government of Tamil Nadu Notification making it obligatory for an employer to provide transportation facility to women employees is dated much later.

6.12. Though the applicant has submitted a copy of Notification (G.O. Ms No. 61, Labour Welfare and Skill Development Department (K2)) which is dated **02.06.2022**, vide which the Government of Tamil Nadu had mandated the obligation on the employers to provide transportation facilities to women employees working in shifts, we find the said obligation was mandated on the employers much earlier vide Notification (G.O. Ms No. 60, Labour and Employment (K2) dated **28.05.2019**. Hence, we find that the input tax credit on leasing, renting or hiring of motor vehicles shall be available to the applicant **from 28.05.2019 onwards**, however the same shall be subject to satisfying and fulfilling the eligibility and conditions provided under Section 16 of the CGST Act, 2017.

6.13. We find that the applicant has made the following submissions with regard to their claim that the ITC should be permitted to be availed for the prior period;

- that ITC should be permitted to be availed for the period prior to F.Y 2022-23 even though the time limit for availing ITC may have elapsed as the Applicant would be at a substantial loss because GST paid on aforementioned services is a sizable amount.
- that the issuance of separate clarification through Circular No. 172/04/2022-GST makes it clear that ITC on goods and services procured for satisfaction of statutory obligation by an employer would be eligible from the time or introduction of said proviso
- that substantial benefit granted by the Act cannot be denied on procedural grounds. That ITC is a form of concession and benefit granted by the legislature to a taxpayer and Section 16 of CST Act, 2017 makes it clear that except the category of supplies notified in Section 17 of CGST Act, 2017, ITC would be eligible on tax paid on all goods or services or both received by a registered person in the course or furtherance of business.

- that prior to issuance of Circular 172/04/2022-GST there was genuine doubt and ambiguity surrounding clause b of Section 17(5) of CGST Act, 2017.
- that the time limit prescribed in Section 16 of CGST Act, 2017 is with respect to the availment of ITC and not the eligibility of ITC itself. That in the instant case, until issuance of Circular 172/04/2022-GST more clarity was awaited on the eligibility of ITC and the ambiguity has been removed altogether only after issuance of the said circular and hence the benefit of ITC cannot be denied on procedural grounds without any fault on the part of the Applicant.
- the applicant placed reliance on judgement pronounced by Supreme Court in the case of Auriay Chamber of Commerce (1986 (25) E.L.T 867-SUPREME COURT) wherein it was held that rules of procedure are hand maids of Justice and not its mistress. It the dealer is not guilty of latches and there is no actual prohibition for refund, one should not get entangled in the cobweb of procedure but do substantial justice

6.14. In this regard we reiterate our findings in para 6.12 that the input tax credit on leasing, renting or hiring of motor vehicles shall be available to the applicant from **28.05.2019 onwards**, i.e the date of notification issued by the Government of Tamil Nadu vide which it was made obligatory on the part of the employers to provide transportation facilities to women employees working in shifts even though the provisions of Section 17(5)(b) was substituted vide notification no 02/2019 dated 29.01.2019 and the same came to effect from **01.02.2019**. We also reiterate that the said availment of input tax credit shall be subject to satisfying and fulfilling the eligibility and conditions provided under Section 16 of the CGST Act, 2017.

6.15. We find the Applicants' submissions that the input tax credit should be permitted to be availed for the period prior to F.Y 2022-23 even though the time limit for availing ITC may have elapsed and that issuance of separate clarification through Circular No. 172/04/2022-GST makes it clear that ITC on goods and services procured for satisfaction of statutory obligation by an employer would be eligible from the time of introduction of said proviso not tenable as per provisions of the GST law. A circular is only clarificatory in nature and not a legislation. Whereas a notification is issued to notify the changes made in law or to give effect to provisions of law, a circular is issued to provide a clarification on an already existing provision of law. Hence, the applicants' submission that in the instant case until the issuance of Circular more clarity was awaited on the eligibility of ITC and the ambiguity has been removed altogether only after issuance of the said circular and hence the benefit of ITC cannot be denied on procedural grounds without any fault on the part of the Applicant is not in consonance with the provisions of the GST law.

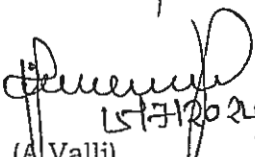
7. In view of the above, we rule as under,

RULING

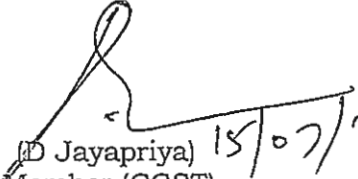
1. Yes, the applicant is eligible to avail input Services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to ensure safety and security of women employees as per Tamil Nadu Shops and Establishments Act, 1947 subject to satisfying and fulfilling the eligibility and conditions provided under Section 16 of the CGST Act, 2017.

2. Input tax credit shall be available to the applicant only on the tax paid on services of leasing, renting or hiring of motor vehicles for providing transport facilities to **women employees alone who are arriving or leaving workplace between 8.00 P.M to 6.00 A.M.**

3. The input tax credit on leasing, renting or hiring of motor vehicles shall be available to the applicant from 28.05.2019 onwards, however the same shall be available **only** on satisfying and fulfilling the eligibility and conditions provided under Section 16 of the CGST Act, 2017.


(A Valli)
Member(SGST)




(D Jayapriya) 15/07/2024
Member (CGST)

To

M/s. CMA CGM Global Business Services (India) Private Limited
(Formerly known as CMA CGM Shared
Service Centre (India) Pvt. Ltd.)

8th Floor, 32A and B, Ambit IT Park,
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Tamil Nadu- 600058

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

3. The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

Copy to:

1. The Assistant Commissioner (ST),
Ambattur Industrial Estate Assessment Circle,
Integrated Building for Commercial Taxes and Registration,
Room No. , III – Floor, Government Farm Village,
Nandanam, Chennai – 600 035.
2. Master File/ Spare – 2.