

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)
(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.	AD2712230434393
GSTIN Number, if any/ User-id	27AAACG8371P1ZZ
Legal Name of Applicant	M/s. General Motors India Private Limited
Registered Address/ Address provided while obtaining user id	General Motors India Private Limited, Plot No. A 16, MIDC, Talegaon Industrial Area, Tahsil Maval, Pune, Maharashtra 410507
Details of application	GST-ARA, Application No. 31 Dated 21.12.2023
Concerned officer	Deputy Commissioner of SGST
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
Issue/s on which advance ruling required	Factory/ Manufacturing The Applicant is subsidiary of General Motors Company, USA, an American multinational automotive manufacturing company headquartered in Detroit, Michigan, United States. ➤ determination of time and value of supply of goods or services or both ➤ determination of the liability to pay tax on any goods or services or both ➤ whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 31/23-24/2024-25/B- 111 Mumbai, dt. 10/03/2025

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. General Motors India Private Limited, the applicant, seeking an advance ruling in respect of the following questions.

- a) Whether assignment of Lease Hold Rights of land by the Applicant in terms of the Asset Purchase Agreement qualifies as taxable supply of services under GST

Laws? If yes, whether GST would apply on the price agreed for transfer of Lease Hold Rights under the Asset Purchase Agreement?

b) Whether the transfer by way of sale of building by the Applicant to HMI in terms of the Asset Purchase Agreement qualifies as 'neither a supply of goods nor a supply of services' under Section 7 read with entry 5 of Schedule III of the GST Laws?

c) Whether the sale of items of plant and machinery in terms of the Asset Purchase Agreement qualifies as taxable supply of individual goods under GST Laws? If yes, whether GST would apply on the price agreed between the parties for the sale of each such items under the Asset Purchase Agreement, as per classification and rate applicable to each item?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION - AS PER THE APPLICANT:

1.1. General Motors India Private Limited, having its manufacturing facility at Plot No. A-16, MIDC Phase expansion II, Talegaon, Pune 410504, Maharashtra (hereinafter referred to as "GMI"/ "Company"/ "Applicant"/ "GM India"), is a Company incorporated and registered under the Companies Act, 1956, and was one of the largest automobile manufacturing Companies in India. The Applicant is registered under the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 (hereinafter collectively referred to as the 'GST Laws') vide 27AAACG8371P1ZZ.

1.2. The ultimate parent of the Applicant is General Motors Company, USA, an American multinational automotive manufacturing company headquartered in Detroit, Michigan, United States. The Applicant was engaged in the business of manufacturing, assembling, marketing, and sale of motor vehicles under the brand name Chevrolet. Starting 2014, the Applicant shifted its focus to exports of vehicles and parts from India.

1.3. The Applicant stopped manufacturing activities at its manufacturing facility at Talegaon from March 2021. Based on the financial statements of the Applicant for



the F.Y. 2021-22, the auditors had evaluated the business activities of GMI and had declared the same as an entity not continuing as a going concern. On account of discontinuation of the business activities of the Applicant, relevant contracts related to procurement or delivery obligations and employees were cancelled/discontinued.

- 1.4. The Applicant is now proposing to sell to Hyundai Motor India Limited ("HMI"), having its office at Wing-A, 1401-1402, Lotus Corporation Park, CTS 18/A, Graham Firth Compound, Western Express Highway, Goregaon East, Mumbai, certain identified assets located at the Talegaon manufacturing facility, on an itemized-asset sale basis, which the Applicant has been given to understand is intended for use by HMI for *inter alia* manufacturing and assembling automotive vehicles and parts distribution. HMI is an unrelated party under the applicable GST laws.

Term Sheet entered into with HMI for sale of assets

- 1.5. The Applicant entered into a Term Sheet dated March 13, 2023, with HMI, which provided for the key terms of the sale. The Term Sheet dated March 13, 2023, signed by the Applicant, Chevrolet Sales India Pvt. Ltd., (CSIPL) and HMI sets out the list of assets to be transferred by the Applicant and CSIPL to HMI along with the value of each asset then agreed, as per clause 9 of the Term Sheet. A copy of the term sheet dated March 13, 2023.

- 1.6. Appendix A, B and C of the Term Sheet captured the details of individual asset prices (in US \$) at which each such asset is planned to be transferred to HMI by the Applicant. An aggregation or a summary of these individual asset prices was contained in Schedule 1 of the Term Sheet.

- 1.7. Further, the items of plant and machinery proposed to be sold were mentioned in Appendix-A (9765 items) of the Term sheet along with the price of each of the assets. The buildings proposed to be sold by the Applicant, were mentioned in Appendix-B (41 buildings in total) of the Term sheet with the construction date, area, and value of each of the buildings.

Agreement entered into with HMI for the sale of assets.

- 1.8. Pursuant to the Term Sheet, the parties executed an Asset Purchase Agreement dated August 16, 2023 together with four subsequent amendments dated October 17, 2023, October 31, 2023, December 05, 2023 and December 18, 2023 (collectively referred to as the 'the APA') to give effect to the sale of the assets covered by the Term Sheet. The relevant principles of the said Term Sheet were incorporated into

the APA for the planned sale of the identified assets from GM India to HMI. With the signing of the APA, the Term Sheet ceased to exist and was overridden by the APA in terms of Clause 14.4 of the APA extracted below:

Entire Agreement: This Agreement and the Transaction Documents constitute the entire agreement between the Parties with respect to the subject matter herein and supersede and cancel any prior oral or written agreements (including the Term Sheet), representations, understandings, arrangements, communications or expressions of intent relating to the subject matter of this Agreement and merges all discussions and negotiations among them (including the Confidentiality Agreement)

1.9. In terms of the APA, the following assets were listed for transfer to HMI subject to the fulfilment or waiver of the conditions stipulated in the APA ("Conditions Precedent"):

- Applicant to assign land lease rights for INR 529,29,18,180/- through a Deed of Assignment. Assignment of such leasehold rights in land owned by Maharashtra Industrial Development Corporation ("MIDC"), in favour of HMI is subject to approval by MIDC and execution of relevant document by the Applicant as per the direction of MIDC.
- Applicant to sell plant and machinery at a price individually agreed for each of the 9,664 items of plant and machinery. The total aggregate value of the plant and machinery to be sold by the Applicant amounts to INR 43,52,52,372/-. The transfer of Plant and Machinery is to be undertaken through issuance of separate invoices which would specify price for each item of plant and machinery, as individually agreed and transfer of title with regards plant and machinery will occur by delivery.
- Applicant to sell 42 buildings, through a Deed of Conveyance, at a value individually agreed for each building. The total aggregate value of the buildings to be sold by the Applicant amounts to INR 214,36,36,237/-. Further, Applicant has completion certificates with respect to each of the buildings intended to be transferred. The 42 buildings include buildings acquired by the Applicant from CSIPL (earlier covered under the Term Sheet between CSIPL and HMI).



1.10. The APA in continuation with the Term Sheet, also provides that the Applicant would be undertaking itemized sale of assets, at the prices agreed in the Schedule 2, annexed with the APA where price is agreed for each asset being transferred.

1.11. Given that the transaction is in the nature of an asset sale, following process was followed to negotiate the price for each asset:

- a. The Applicant undertook an assessment of the market values of each of the asset items and provided that assessment to HMI.
- b. HMI independently reviewed the assessment undertaken by the Applicant and undertook their own independent assessment of the prices for each asset item under discussion. The assets were also inspected during physical verification, based on fixed assets register of GMI.
- c. Based on the independent assessment undertaken by HMI, a price proposal was made by HMI at an asset item level, which was accepted by GMI. Certain fully depreciated assets that were at the end of their useful life were valued at INR 1.

1.12. The following clauses from the APA are relevant in the context of the questions at hand:

"WHEREAS:

A. GM INDIA has agreed to sell, transfer and assign to HMI, and HMI has agreed to purchase and accept the transfer and assignment of (each subject to the terms and conditions and in the manner set forth herein) the Transferred Assets (as defined hereinbelow) on an itemized-asset sale basis on the terms and conditions set forth herein.

B. The Parties are entering into this Agreement to record the terms and conditions for the acquisition of the Transferred Assets and matters in relation thereto.

c. It is clarified that the Transaction (as defined hereinbelow) does not contemplate the transfer of employees, workmen and independent contractors of GM INDIA (past, present or litigating).

a. Transfer of Assets

Transferred Assets

2.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, GM INDIA agrees to sell, assign, transfer, convey and deliver to HMI, and HMI agrees to purchase from GM INDIA, and accept the transfer, assignment and delivery from GM INDIA of, all of GM INDIA's right, title and interest in and to the assets,



properties, and rights, in respect of GM INDIA's Talegaon Plant, as set forth in Schedule 2, in each case, on an as-is where-is basis and free and clear of any Encumbrances ("Transferred Assets"); provided that in no event shall any Excluded Asset form part of the Transferred Assets.

.....

Excluded Assets

2.2 The Excluded Assets are retained by GM INDIA and/or its Affiliate(s). The Parties expressly understand and agree that HMI is neither purchasing nor acquiring in any manner whatsoever, and GM INDIA is not selling, assigning or transferring in any manner whatsoever, any of the Excluded Assets.

3. Purchase Price, Payments, and Taxes

3.1 The aggregate purchase price for the sale, transfer, assignment, and delivery of the Transferred Assets under this Agreement is INR 787,18,06,789/- (India Rupees Seven Hundred and Eighty Seven Crores Eighteen Lakhs Six Thousand Seven Hundred and Eighty Nine only), which is the total of the purchase price for each of the Transferred Assets as set out in Schedule 2 (the "Purchase Price"), which HMI will pay to GM INDIA in accordance with Clause 3.2 and Clause 3.3.



7. POST-CLOSING ACTIONS AND COVENANTS

7.1 Post-Closing Actions

a. HMI acknowledges and agrees that the GM Names are and shall remain the property of GM INDIA or relevant Affiliate of GM INDIA and that nothing in this Agreement shall transfer or license or shall operate as an agreement to transfer or license, any right, title or interest in the GM Names to HMI or any of its Affiliates.

As per Schedule 2 "Transferred Assets" read along with Annexures of Schedule-2 to the APA, the Applicant has agreed to transfer the following assets to HMI, which Applicant has been given to understand is for undertaking business operations, at the value agreed with regard each of the assets. Individual prices were agreed for each asset being transferred in the APA and is documented in Schedule 2(to the APA read along with relevant annexures. Hence, the total consideration mentioned in the APA is an aggregation of the individual prices determined for each of the assts under respective category:

Sr. No.	Transferred Asset	Purchase price (In INR as per the APA)
1.	Land lease rights with respect to GM India's Talegaon manufacturing facility	529,29,18,180
2.	Plant & Machinery	43,52,52,372
3.	Buildings	214,36,36,237
4.	Total	787,18,06,789

The sale of assets is subject to fulfilment or waiver of the conditions stipulated in the Paragraph -5 of the APA ("Conditions Precedent"). Further, the APA was amended through Amendment No 1 & 2 that are attached with this application. Thereupon, APA was amended on December 05, 2023 and December 18, 2023 referred to as the 3rd and 4th Amendment, wherein through the 4th amendment the Applicant has agreed to sell identified buildings to HMI (which under the Term Sheet were proposed to be sold by CSIPL to HMI, but were subsequently acquired by the Applicant from CSIPL on 11th December 2023 for onward sale to HMI) in addition to buildings covered under the APA. Through this 4th Amendment, a few other terms and conditions of the APA were also amended including changes were made to list of plant and machinery where certain assets were agreed inter-se the Applicant and HMI to be not sold by the Applicant to HMI.

Questions on which Advance Ruling is being sought

I.13. In the aforesaid backdrop, the Applicant requests this Hon'ble Authority to issue its ruling (/s) on the following questions:

- Whether the assignment of Lease Hold Rights of land by the Applicant in terms of the APA qualifies as taxable supply of services under GST Laws? If yes, whether GST would apply on the price agreed for transfer of Lease Hold Rights under the APA?
- Whether the transfer of building by way of sale by the Applicant to HMI in terms of the APA qualifies as 'neither a supply of goods nor a supply of services' under Section 7 read with entry 5 of Schedule III of the GST Laws?
- Whether the sale of items of plant and machinery, in terms of the APA, qualifies as taxable supply of individual goods under GST Laws? If yes, whether GST would apply on each item on the price agreed between the parties for the sale of such items under the APA, as per classification and rate applicable to each item?

The present application is maintainable before the Advance Ruling Authority

1.14. The Applicant submits that in the present case, the assets proposed to be sold/transferred are located in the State of Maharashtra and hence, the present authority has jurisdiction to entertain and pronounce a ruling in the present application.

1.15. In the instant case, under the APA, the Applicant would be undertaking sale of assets and assignment of leasehold land rights to HMI on an itemized sale basis. The Applicant submits that the queries raised in the instant application relate to determination of whether the transaction would amount to supply of goods and services under GST or not, and whether the value for computation of GST would be the value agreed for each of the assets individually at which GST would be levied at the rate of GST applicable to the respective assets prescribed under the GST Law. As per Section 97 of the GST Laws, the question of whether a particular sale transaction would qualify as supply or not, the classification of goods and services under GST and the value of goods and services for the purpose of payment of GST is within the domain of this Hon'ble Advance Ruling Authority in terms of Section 97 of the CGST Act. Hence, the present application is maintainable as per the provisions of the GST Laws before this Hon'ble Advance Ruling Authority.

1.16. That in the present case, the ruling is being sought on the transaction under the APA, and thus, the application is maintainable. In this regard, reliance is placed on the decision of the Maharashtra Authority for Advance Ruling *In Re. Municipal Corporation of Greater Mumbai 2020 (34) G.S.T.L. 371 (A.A.R. - GST - Mah.)*, wherein it was held that as per Section 95, the term 'advance ruling' means a decision provided by the authority to the applicant on matters or questions specified in Section 97(2), in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

1.17. Further, in the following rulings, the Maharashtra Authority for Advance Ruling has given a ruling on the questions of whether the transactions in the relevant case qualifies as a supply of goods or services or not and whether GST is applicable on such transactions or not:

In re. Dubai Chamber of Commerce and Industry 2021 (52) G.S.T.L. 335 (A.A.R. - GST - Mah.)

In re. Maha Mumbai Metro (M3) Operation Corporation Limited 2022 (57) G.S.T.L. 159 (A.A.R.- GST - Mah.)

In Re. Emcure Pharmaceuticals Ltd. 2022 (60) G.S.T.L. 231 (A.A.R.- GST - Mah.)

1.18. Thus, the Applicant submits that the present application is maintainable under Section 97 of the CGST Act.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1 The Applicant submits that in the present case, the Applicant would be undertaking itemized sale of identified assets to HMI, which is taxable at the specific rate prescribed under the GST Laws as stated below:

- a) That the assignment of rights, in the land leased from Maharashtra Industrial Development Corporation ("MIDC"), under the APA would be a taxable supply of service and GST would apply on the price agreed for transfer of Lease Hold Rights.
- b) That in the present case, the sale of building under the APA would not qualify as supply under the GST Laws by virtue of Section 7 read with Entry 5 of Schedule III of the CGST Act and Maharashtra Goods and Service Tax Act, 2017 ("MGST Act"). Since the provisions of the CGST Act and the MGST Act are identical, the provisions of CGST Act are referred herein for ease of reference and the same may be read along for the purposes of MGST Act, wherever applicable.
- c) That the activity of sale of each of the plant and machinery under the APA would be a taxable supply of individual goods as per Section 7 of CGST Act read with Entry 4(a) of Schedule II of the CGST Act, which are liable to tax individually, as per the individual asset price agreed in the APA and at the rate specific to the individual HSN classification.



Taxability under the GST Laws

2.2 Under Article 366 (12A) of the Constitution of India, "goods and services tax" is defined to mean any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Thus, as per the Constitution, GST is a tax levied only on supply of goods or services or both.

2.3 In terms of Section 9 of the CGST Act, the taxable event under GST is the "supply" of goods and services. The meaning of the term "supply" is envisaged under Section 7 of the CGST Act, to include all kinds of supply of goods and services made by one person to another for consideration such as sale, barter, lease, exchange, etc. The said Section 7 of the CGST Act is extracted below:

"(1) 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, licence, rental,

lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Explanation. For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

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

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

[(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in

Schedule II.]

(2) Notwithstanding anything contained in sub-section (1), —

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of 40[sub-sections (1), (1A) and (2)], 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.."

2.4 From a perusal of the above definition of the expression 'supply', it can be seen that for a transaction to qualify as supply under Section 7(1), the following conditions are required to be met:

- Supply should be of goods and services; and
- There must be two persons, i.e., supplier and recipient; and

- There must be a consideration for supply; and
- The activity should be in the course of furtherance of business.

2.5 Here it is noteworthy that in terms of Section 7 (1A), certain activities or transactions have been specifically categorised as supply of goods or supply of services in Schedule II.

2.6 That under the CGST Act, certain transactions, as elaborated in Section 7(2) are: of the Act, shall neither be treated as goods nor services. These transactions

- Activities or transaction covered under Schedule III; and
- Activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Valuation provisions under GST Laws

2.7 Under the CGST Act, the levy of tax is on the event of "supply", which is defined under Section 7 of the CGST Act. That the value of such supply is to be determined as per Section 15 of the CGST Act, which provides that value shall be the transaction value, which is the 'price actually paid or payable' for the 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. The provision further deals with inclusions and exclusions from the value of supply.

The said Section 15 of the CGST Act reads as follows:

"15. Value of taxable supply.

(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.

(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...."



2.8 Thus, as per Section 15, the value of supply shall be the transaction value. In other cases, i.e., where the price is not the sole consideration and the parties are related, then, the value shall be determined as per the valuation provisions contained in Chapter IV (Rules 27-35) of the Central Good and Service Tax Rules, 2017 ("CGST Rules").

2.9 In the present case, the Applicant proposes to sell the buildings constructed for their business, and various plant and machinery purchased by them during the tenure of their business and assign leasehold rights in land leased from MIDC, on an itemized sale basis to HMI. We have been given to understand that HMI shall *inter alia* use these assets for carrying out manufacturing and assembling automotive vehicles and parts distribution.

2.10 In the humble submission of the Applicant the transaction of assignment of rights in the leasehold land and the sale of plant and machinery are taxable under the CGST Act. Further, every plant and machinery being transferred by way of sale to HMI shall be taxable at the individual values agreed in the APA,

at the rate prescribed as per their individual HSN classification. Further, sale of buildings is not liable to GST. The submissions in support of this legal position proposed to be adopted by the Applicant are as follows:

A. Assignment of land lease rights qualifies as supply of service under GST

A.1. The Applicant in terms of the APA would assign the leasehold rights of the land leased to them by the MIDC to HMI. That vide Lease Deed dated July 03, 2010, MIDC leased Plot No. A-16 in the Talegaon Industrial Area, admeasuring about 300 acres to the Applicant for a period of 95 years, for setting up factory and related offices, facilities, and infrastructure, for *inter alia* manufacturing and assembling automotive vehicles and parts distribution.

A.2. The value of such assignment of leasehold rights, as per Schedule 2 of the APA is INR 5,292,918,180.

A.3. Further, as per Clause 5.1 of the APA, one of the conditions of the agreement is that the MIDC should have approved the assignment of lease deed dated July 03, 2010, between the Applicant and MIDC in favour of HMI and Applicant shall deliver to HMI necessary documentation confirming payment of assignment fees/transfer premium (unless waived) to the MIDC. Relevant portion of Clause 5.1 of the APA is as follows:

"5. Condition Precedent

5.1 Closing is conditional on the following conditions being satisfied or waived (the "Conditions" or "Conditions Precedent"):

a. the following conditions being satisfied and/or approvals being obtained by GM INDIA, in each case, to HMI's reasonable satisfaction

unless waived by HMI in its sole discretion:

i. the MIDC having approved the assignment of MIDC Lease in favour of HMI, and GM INDIA having delivered to HMI the necessary documentation confirming payment of assignment fees/transfer premium (unless waived) to the MIDC;"

A.4. Therefore, in order to transfer the leasehold rights of the land, which as per their understanding is *inter alia* intended to be used for business operations by HMI, including manufacturing and assembling automotive vehicles and parts distribution, there shall be an assignment of such leasehold rights by the Applicant to HMI with the approval of MIDC.

A.5 That under Section 7(1) of the CGST Act, 'Supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease, or disposal made or agreed to be made for a consideration by a



person in the course or furtherance of business. Thus, in order to qualify as taxable supply under Section 7(1), the requirements to be fulfilled are:

- Supply of goods or service;
- The same should be for a consideration; and
- Such supply should be in the course of business.

A.6 In the present case, the assignment of lease hold rights qualifies as supply of service in the course of furtherance of business and thus, the same is taxable under the CGST Act. In this regard, it is submitted that, the term "goods" and "services" are defined in the CGST Act as follows:

"2(52) goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

2(102) services means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

[Explanation. For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;];"

A.7. That as per the CGST Act, while goods mean every kind of movable property, services encompass anything that is not goods under the CGST ACT. Therefore, the term 'service' has been given a very wide amplitude under the GST Laws.

A.8. In the present case, by application of the guiding principles outlined under the definition of supply, the following position elaborated in the ensuing paragraphs emerges.

A.9. Firstly, the Applicant is proposing to assign the land lease rights for INR 529,29,18,180, which qualifies as a service and not supply of goods as there is transfer of rights and not any movable property.

A.10. Secondly, it is clear from the APA that the leasehold rights will be transferred for an amount of INR 529,29,18,180. Thus, the requirement of consideration has been satisfied in the present case.

A.11. The Applicant further submits that the assignment/transfer of leasehold rights has been undertaken by the Applicant in the course of its business.

The term "business" is defined in S. 2(17) of the CGST Act as follows:

"business includes-

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business; (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course of furtherance of his trade, profession or vocation;
- [(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;"



A.12. From a perusal of the definition of business under the CGST Act, it emerges that the term 'business', includes the supply or acquisition of goods or services in connection with the closure of a business in terms of Section 2(17)(d) of the CGST Act. Thus, the same qualifies as a transaction in the course or furtherance of business.

A.13. Accordingly, in view of the above, the assignment of leasehold rights to HMI is a taxable supply of service under the CGST Act.

A.14. That in this regard, reliance is placed on the advance ruling passed in the case of *In re India Pistons Limited (GST AAR Tamil Nadu) Order No. 26/AAR/2021*, wherein the issues were whether transfer of SIPCOTs allotted land from the Applicant to M/s. Inox Air Products Private Limited would fall within the ambit of 'Supply' and whether GST was payable on the transfer of leasehold rights in respect of the consideration received by the Applicant from M/s. INOX Air Products Private Limited for the land allotted by SIPCOT. The Advance Ruling Authority in this case held that the activity of agreeing to part with the leasehold interests held by the applicant in favour of M/s. INOX Air Products Private Limited is 'Supply' as defined under Section 7 of the CGST Act. The relevant extract of the ruling is as follows:

"7.1 From the facts of the case as available before us, it is seen that IPL was allotted and were holding lease of 15.34 acres of land in the SIPCOT Industrial Complex at Hosur(phase-II). The Original lease was entered into for a period of 99 years and the lease was entered into vide lease deed dt. 07.07.1993. INOX had approached them to transfer un-utilized portion of the allocated land to the extent of 5.00 acres for setting up a state of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant. A Memorandum of Understanding (MOU) has been entered into between the applicant and INOX on 20.11.2020 for transfer of leasehold rights for the remaining period of lease from IPL to INOX subject to the approval of SIPCOT in respect of the land measuring 5.00 acres...

....

.5 From the above facts of the case, it is evident that SIPCOT who owns the land has leased the allocated land to IPL for a period of 99 years. IPL by virtue of the lease conditions, do not possess the right to sub-let any part or whole of the property leased to them. However, IPL may transfer the leasehold rights to any other person with the approval of SIPCOT, who may or may not grant such approval. Thus, it is clear that the applicant holds the leasehold rights which he may agree to transfer to any other person but the applicant cannot per-se transfer the leasehold rights to such person. The only option that exists for the applicant is to request SIPCOT to approve such an agreement entered into by the applicant with the other person and request SIPCOT to approve and execute the modified deed of lease for the remaining period. Accordingly, in the case at hand, IPL had agreed to transfer the leasehold rights held by them in respect of the land required by INOX to their favour for a consideration and requested SIPCOT to approve the same. SIPCOT has approved the request and stipulated the payment of differential cost of land & processing fees by INOX and thereupon to execute the modified lease deed by both IPL and INOX for their respective leaseholds.

From the above statutory provisions, it is evident that an activity in any form effected for a consideration and made in the furtherance of business is a 'Supply'.

7.7 In the case at hand, IPL vide the MOU has agreed to part with their interests in the leasehold rights held by them, on the land required by INOX; Since as per the lease deed executed between SIPCOT and IPL, IPL can partwith their



interests in the land leased to them only with the approval of SIPCOT, IPL has sought the approval of SIPCOT. If the approval had been denied by SIPCOT, then IPL would not be able to part with their interests and the MOU entered into with INOX specifies that in such a condition, the advance extended by INOX to IPL against a bank guarantee of IPL will be returned to INOX. In the subject MOU, the conditions of supply are made exclusively only by IPL and INOX. As IPL can part with their interests only with the approval of SIPCOT, the same is mentioned in the MOU and this in no way can be construed that the conditions of the supply stands dictated by a third party. Therefore, there is no merit in the contention of the applicant that there is no agreement/contract wherein conditions of supply are made by the supplier/recipient but by the third party, i.e., SIPCOT. Further, from the MOU which is the agreement entered into between IPL and INOX for the activity of agreeing to part with the leasehold rights held by IPL in favour of INOX, it is seen that IPL assures to undertake certain activities and INOX acknowledges the same which clearly exhibits the relationship between IPL and INOX as a service provider and recipient. The compensation for parting with the interests is definitely a consideration for agreeing to part with the interests held by IPL in the leasehold. The transaction is not a transfer of leasehold as IPL by the clauses of Lease deed executed with SIPCOT is not permitted to sub-lease. The activity of IPL as seen from the Memorandum of Understanding executed between IPL and INOX and the approval letter of SIPCOT, is only a transaction in which IPL agrees to part with the leasehold interests it possess for the remaining lease period in favour of INOX with the approval of SIPCOT in respect of the land required by INOX. Therefore, the activity is not transfer of leasehold rights by IPL to INOX but is an activity of agreeing to part with the leasehold interests IPL hold on the land to be leased to INOX by SIPCOT. If it were a transfer of leasehold rights, there should be an agreement for such transfer between IPL and INOX. It is stated by IPL that apart from the Memorandum of Understanding, there is no agreement between IPL and INOX. The modified lease deed is also executed by IPL and INOX independently with SIPCOT and INOX is to pay the differential cost of lease rentals and processing charges to SIPCOT, as seen from the approval letter of SIPCOT. The above, clearly establishes that the activity undertaken by IPL in agreeing to part with the interests of the leasehold rights in the land required by



INOX for furtherance of their business, against a consideration is an activity of 'agreeing to do an act', which is a taxable service classifiable under 'Other Miscellaneous Services', with SAC 9997.

A.15. In the present case, as per Clause (v) of the lease deed dated July 03, 2010, the Applicant cannot assign, underlet, etc., without the prior permission of CEO of MIDC. That in the present case, the leasehold rights would be assigned only after the approval of the MIDC, as is clear from Clause 5 of the APA. Thus, applying the above ruling, it can be said that assignment of the leasehold rights in the land to HMI for its business operations, is a taxable supply of service under the CGST Act.

B. Sale of the buildings by the Applicant under the APA to HMI does not qualify as 'supply' under GST laws.

B.1. The Applicant, under the APA with HMI, would be transferring the building constructed and owned by the Applicant during the course of its business at the Talegaon facility. The description of each of the buildings and the value of the same have been captured in Annexure-B of Schedule 2 to the APA. The 3rd and 4th Amendment of the APA is enclosed with this application.

In terms of the APA, the total value of the 42 buildings proposed to be transferred is INR 214,36,36,237/-.

B.2. That as regards the taxability of the sale of the buildings is concerned, the Applicant submits that the sale of the buildings is not covered under the scope of 'supply' by virtue of Section 7(2)(a) read with Entry 5 of Schedule III of the CGST Act.

B.3. It is submitted that as per Section 7(2)(a) of the CGST Act, activities or transactions specified in Schedule III shall neither be considered as a supply of goods nor as a supply of services and thus, the supplies covered under Schedule III of the CGST Act shall not be liable to tax under the CGST Act.

B.4. It is pertinent to note that Entry 5 of Schedule III reads as follows:

"Schedule III - Activities or Transactions which shall be treated neither as a supply of Goods nor a supply of Services"

B.5. In terms of Entry 5 of Schedule III of the CGST Act, sale of building subject to clause (b) of paragraph 5 of Schedule II, is not covered in the scope of



'supply' and hence, not liable to tax under the Act. Further, clause (b) of paragraph 5 of Schedule II reads as follows:

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

"5. Supply of services

The following shall be treated as supply of services, namely:-

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier."

B.6. The Applicant submits that for the purpose of present application, the aforesaid clause (b) of para 5, Schedule II is not relevant as the buildings proposed to be sold are "not under construction/constructed buildings for sale to buyer before the issuance of completion certificate". That in the present transaction, the buildings have been constructed by the Applicant, supported duly by relevant completion certificates, for their own use in relation to GM India manufacturing business in India. Thus, the transaction of sale of the buildings in the present case is not covered under clause (b) of Paragraph 5 of Schedule II.

B.7. Given the above, it is submitted that the sale of buildings in the instant case squarely falls within the purview of entry 5 of Schedule III and as a result, would not qualify as either a supply of goods or services.

B.8. Notwithstanding, it is submitted that in the present case, there is no activity undertaken by the Applicant to qualify as supply. The building is an already existing structure and is not being constructed for sale by the Applicant to HMI. The building, which is an immovable property, is being sold on an as-is basis. Thus, mere sale of building does not qualify as a service under the GST Laws.

B.9. That even in the Press Release dated December 08, 2018, on the effective rate of GST on complex, building, flat, etc., issued by the Central Board of Indirect Taxes and Customs, it was clarified that there is no GST on sale of complex/ building and ready to move-in flats where sale takes place after issue of completion certificate by the competent authority. GST is applicable



on sale of under construction property or ready to move-in flats where completion certificate has not been issued at the time of sale. That thus, applying the principle that only under construction building or ready to move in before completion certificate are taxable, there is no question of applicability of GST on sale of constructed buildings, as in the instant case.

B.10. In view of the above, the sale of buildings by the Applicant to HMI does not qualify as 'Supply' under the GST Laws. Thus, no GST is payable on such transfer/sale of building by the Applicant.

C. The sale of each identified item of plant and machinery under the APA amounts to individual taxable supply of goods and GST would be applicable on each of the assets as per their individual classification and rate, on prices negotiated and specified in the APA for each asset

C.1. The Applicant, as per the APA dated August 16, 2023, has decided to sell various machinery and equipment outlined therein to HMI. Further, the price of each of these plant and machinery has been specifically agreed and stands outlined in Annexure - A of Schedule 2 to the APA.

C.2. That the APA also enlists the price of plant and machinery, equipment, etc, to be transferred to HMI in Schedule 2. It is relevant to note that under the APA, the plant and machinery to be sold are categorically listed with the intention to sell each of these items independently, as per the individual prices agreed that is the value taxable as per the applicable HSN rates on such prices. Hence, the 9,664 items to be sold to HMI would be sold for the consideration specific to each of the assets in the given list at the applicable GST rates.

C.3. As discussed above, in terms of Section 7(1) of the CGST Act, any supply of goods and services for consideration, in the course or furtherance of business, is a taxable supply under the CGST Act. In the present case, the sale of plant and machinery fulfils all the conditions mentioned in Section 7 of the CGST Act in the following manner:

- The levy of GST is on supply and the scope of supply is discussed in Section 7 of the CGST Act. Here, it is relevant to understand the meaning of the modes of transfer, which have been enumerated in Section 7(1)(a) of the CGST Act. Under the said Section, transfer by way of sale is a supply.



- Sale is defined in Section 54 of the Transfer of Property Act, 1882 as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."
- Further, the Hon'ble Supreme Court in the case of *Joint Commercial Tax Officer, Harbour Division, II, Madras v. Young Men's Indian Association (Regd.), Madras (1970) 1 SCC 462* held that where general property in goods belonging to a person is under a contract transferred to another for a price paid or promised, the transaction is a sale.
- The term "transfer" has been defined in the Advanced law Lexicon to mean an act or transaction by which property of one person as by him vested in another. Further, in the case of *Sunil Siddarthbai v. CIT (1985) 156 ITR 509 (SC)* the expression "transfer" of property was defined to mean the passing of rights in the property from one person to another.
- Further, since the underlying transaction in the present case involves supply of goods, it is relevant to understand the meaning of the term "goods". The term 'goods' is defined in S. 2(52) of the CGST Act to mean every kind of movable property other than money and securities, but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
- Further, 'capital goods' is defined in Section 2(19) of the CGST Act as goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.
- In the instant case, the Applicant would be selling to HMI the plant and 33 machinery, which are undisputedly goods. These goods were capitalised in GMI books. Thus, the plant and machinery, to be sold in the present case qualify as a supply of goods in the present case.
- Further, to constitute a supply under GST, one of the main requirements is the presence of consideration. That the term 'consideration' is defined in Section 2 (31) of the CGST Act and as per the said provision, consideration means any payment or monetary value of an act of supply of goods or service. Thus, there has to be a reciprocal payment or an act so as to qualify as a consideration for a supply.



- In *E-Square Leisure Pvt. Ltd.* 2019 (24) GSTL 125 (A.A.R. - GST), the Maharashtra Advance Ruling Authority explained the scope of the term "consideration" as follows:

"The definition of consideration is inclusive and the consideration may be in cash or kind. The payment received will not be treated as consideration, if there is no direct link between the payment and supply. From the close scrutiny of above definition it is clear that there should be a close nexus between the payment and supply and thus any payment/exchange/barter etc. would be treated as consideration for supply and liable to GST."

- In the present case, as per APA, it is evident that the purchase price for the transfer of assets is the individual prices agreed between the parties as provided in the Schedule-2 of the APA read along with Annexure A of Schedule-2 to the APA therein. Similarly, in the APA, Annexure-A lists out the individual assets, under 'plant and machinery', to be transferred to HMI along with their prices.
- Prices of each of the above items of plant and machinery were separately valued, discussed, negotiated and agreed between HMI and GMI (referring to the process followed, as per Statement of Facts above), which ultimately culminated into the gross total price as specified in Clause 3 of the APA, which is a mathematical aggregation of individual asset prices.



In the APA, Annexure -A of Schedule- 2 signifies that each plant and machinery is an individual asset having its own value for the purpose of transfer/sale under the proposed transaction. The said amount is a consideration towards the supply of individual goods made by the Applicant to HMI. Thus, the condition of consideration has also been duly fulfilled in the present case.

- The term "business" is defined in Section 2(17) of the CGST Act, wherein as per Section 2(17)(c) of the CGST Act, any activity or transaction of trade, commerce, etc., whether or not there is volume, frequency, continuity or regularity of such transaction, qualifies as business.
- The activity of sale of assets in the present case is in the course of furtherance of business in terms of Section 2(17)(c) of the CGST Act.

C.4 It is further submitted that with respect to disposal of business assets, it has specifically been provided under Entry 4(a) of Schedule II of the CGST Act that the transfer/disposal of business assets qualifies as a supply of goods. Relevant entry of the Schedule is as follows:

"Schedule II - Activities or transactions to be treated as supply of goods or supply of services

(4) Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;"

C.5. Thus, in view of the above, the Applicant submits that the sale of individual assets by the Applicant qualifies as supply of goods under Section 7 of the CGST Act.

C.6. Value of 'plant and machinery' to be sold by the Applicant Section 9 of the CGST Act, 2017 stipulates that there shall be levied a tax called CGST on all intra-state supplies of goods or services or both, on the value determined under Section 15 and at such rates as notified and the same shall be paid by the taxable person. Thus, the value of a supply has to be arrived at, as per Section 15 of the CGST Act. As per Section 15 (1) of the CGST Act, the value of supply shall be the transaction value, i.e., the price paid for the supply *inter alia* where the price is the sole consideration, and the parties are not related. In other cases, the value is determined as per the valuation rules.

C.7. In the present case, it is clear that GM India and HMI do not qualify to be related persons in terms of the explanation to Section-15 of the CGST Act, 2017. Also, no consideration whatsoever shall be payable by HMI over and above the value of each of the assets in the mentioned APA. The invoice will be raised by GM India on HMI for the full amount i.e. for the full value of the goods being supplied.

C.8. As per Schedule 2 of the APA, the price of each of the assets is set out in Annexure-A of Schedule-2 to the APA. Thus, Annexure-A enlists the value of each of the individual assets transferred by the Applicant. Accordingly, the value of supply in the instant case shall be the value of each of the assets assigned in Annexure- A of Schedule-2 to the APA.



Rate of tax applicable on sale of itemized assets.

C.9. Before adverting to the rate of tax applicable on the sale of plant and machinery proposed by the Applicant, it is relevant to note that in the transaction, each and every asset is proposed to be sold at the individual price of such assets. The same is clear from Schedule 2 of the APA. In other words, the sale of individual assets is being undertaken on an itemized basis, i.e., individual basis.

C.10. That the intention of the parties is clear from Schedule 2 of the APA that every item is to be sold individually i.e., at separate pricing and the tax implication, if any, would be determined basis the individual product and their respective classification.

C.11. The Applicant submits that the rate of tax on which GST will be payable on the itemized sale will be determined as per the rate prescribed for the goods as per the relevant HSN classification in Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017.

C.12. In this regard, the Applicant relies on the ruling given by the Authority for Advance Ruling, West Bengal, in *In Re. Mansi Oil and Grains Pvt. Ltd.* 2020 (38) G.S.T.L. 626 (A.A.R. - GST - W.B.). In this case, the applicant sought a ruling on whether the sale of plant and machinery by the liquidator amounts to supply of goods and/or services or both within the meaning of "supply" as defined under Section 7 of the GST Act and the rate of tax applicable on such supply. While holding that the sale of assets by the liquidator would amount to supply as per Sl. No. 4(a) of Schedule-II of the CGST Act, the Authority also held that the goods sold are plant and machineries, office equipment and furniture classifiable under different HSN and taxable under appropriate entry under Notification No. 1/2017-C.T. (Rate).

C.13. Thus, the Applicant submits that the rate of tax on the sale undertaken in the present matter will be determinable on the basis of tax rates prescribed for HSN classification of each of the goods being sold, as mentioned in Annexure- A of Schedule-2 to the APA. The list of individual assets being sold, the applicable HSN classification and the applicable rate of list is attached with this application.

C.14. In view of the above, it is submitted that the activity of sale of each of the plant and machinery under the APA would be a taxable supply of

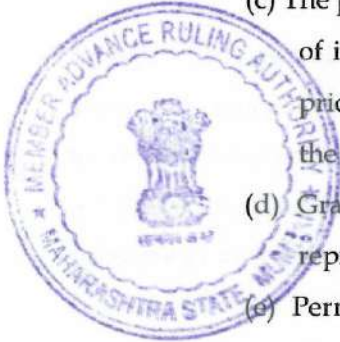


individual goods identified in Annexure-A of Schedule-2 to the APA, as per section 7 of CGST Act read with Entry 4(a) of Schedule II of the CGST Act. That the value of supply of such goods would be individual prices agreed for each of these goods in the Annexure-A of Schedule-2 to the APA which would be liable to tax individually, at the GST rate applicable to respective HSN.

Prayers

In view of the foregoing, it is prayed that this Hon'ble Authority be pleased to hold that:

- (a) The building to be transferred by the Applicant by way of sale under the APA is neither supply of goods nor supply of services in terms of Section 7(2)(a) read with Entry 5 of Schedule III of the CGST Act and, hence, not taxable; and
- (b) The activity of assignment of leasehold rights under the APA is a supply of service, and is liable to GST at the price agreed for such assignment under the APA; and
- (c) The plant and machinery to be transferred under the APA constitutes supply of individual goods i.e., itemized sale of goods and is liable to GST on the prices specified for each item in Annexure-A of Schedule-2 to the APA, at the GST rate applicable to the respective HSN; and
- (d) Grant a personal hearing to the Applicant along with an authorized representative;
- (e) Permit the Applicant to file further / additional submissions in these proceedings; and
- (f) Pass such other order this Hon'ble Authority may feel appropriate in the factual circumstances in these proceedings and oblige.



Applicant filed additional submission dated 07.02.2025

1. They submitted the following documents:
 - MIDC order for the leased plot, accompanied by the Approval / NOC from the MIDC Engineer.
 - Balance sheet for the Financial Year 2023-2024, including annexures.
 - Deed of Assignment for leasehold rights, dated December 29, 2023.
 - Building completion certificates, including details of current and future use of the leased plot.
2. The applicant submitted the following additional documents for your kind consideration:

- Conveyance Deed for buildings and superstructures dated December 29, 2023
- Hand over letter by GM India to HMI dated December 29, 2023 confirming the delivery of all assets in accordance with the agreement.
- Letter of hand over of possession by GM India to HMI dated December 29, 2023 confirming the receipt of consideration.
- Hand over letter by HMI to GM India confirming the delivery of all assets in accordance with the agreement.
- Acknowledgement of Excluded Assets by GM India to HMI regarding the physical verification of assets excluded from the transfer.
- Acknowledgement of Physical Verification of Transferred Assets by HMI to GM India confirming the physical verification of the transferred assets.

3. They requested to take the aforesaid documents on record.

3. CONTENION - AS PER THE JURISDICTIONAL OFFICER DATED 22.01.2025.

Q.A) Whether assignment of lease Hold Rights of land by the Applicant in terms of the Asset Purchase Agreement Qualifies as taxable supply of services under GST Laws? If yes, whether GST would apply on the price agreed for transfer of Lease Hold Rights under the Asset Purchase Agreement?

Answer: A i) Yes.

The entry 41- of notification no. 12/2017 C.T. (Rate) dated 28/06/2017 "Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area."

This exemption is applicable only when upfront amount is received by State industrial corporations / undertakings. In case original buyer transfer the right to other person, this exemption notification is not applicable.

Hence, the above said transaction (From GMPL to HMI) qualifies as a taxable supply of services under GST laws. It is covered in Schedule II by serial No. 2(a)i.e-Any lease, tenancy, easement, licence to occupy land is a supply of services.

A ii) Yes. GST would apply on the price agreed for transfer of Lease Hold Rights under the Asset Purchase Agreement.



Q.B) Whether the transfer by way of sale of building by the Applicant to HMI in terms of the Asset Purchase Agreement qualifies as Neither a supply of goods nor a supply of services under Section 7 read with entry 5 of Schedule III of the GST Laws?

Answer: No.

The ownership of the construction on the leased land is not established with the lessee. Even if the possession of the construction is accompanied by a certificate of completion while returning the lease, it is considered a lease service and should be taxed accordingly. It is not possible to separate the two components as the leased land and the construction work on it.

Q.C) Whether the sale of items of plant and machinery in terms of the Asset Purchase Agreement qualifies as taxable supply of individual goods under GST Laws? If yes, whether GST would apply on the price agreed between the parties for the sale of each such item under the Asset Purchase Agreement, as per classification and rate applicable to each item?

Answer:

C i) Yes. These transactions qualify as supply.

C ii) Yes, GST would apply on the price agreed between the parties for the sale of each such item under the Asset Purchase Agreement.

The jurisdictional officer filed additional Submission dated 05.03.2025.

In continuation with reply submitted on dated 06.01.2025, he further added as under:

The chronology about filing AAR is as below

- 1) First asset purchase agreement between GMIPL & HMI dated -16/08/2023
- 2) Application filed to AAR - 21/12/2023
- 3) Invoice issued date - 27/12/2023
- 4) GSTR-1 filed on - 10/01/2024
- 5) GSTR-3B filed on - 19/01/2024

First asset Purchase agreement (16/08/2023)

Clause at 2.1:

If the parties fails to reach a mutual agreement, then for the purpose of payment of GST on the transaction, the classification determined by GM India shall be adopted subject to decision of Authority for Advanced Ruling (AAR) or relevant Appellate authorities (Appellate Authority) under clause 3.8.

Clause 3.8:

Subject to HMI review and confirmation, GM India shall on or before September 15, 2023 for such other date as may mutually agreed by the parties (AAR filing date) apply with the AAR for the purposes of confirming the questions mutually agreed upon by the parties (AAR application) _____

Though definition under section 95(a)

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority 1[or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or subsection (1) of section 100 2[or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

The taxpayer had reasonable time to file AAR, but he filed at the eleventh hour.

Secondly, at the virtual hearing on 20/02/2025, the representatives of taxpayer stressed upon Question B raised in the application, which needs to be discussed.

For this, we have to examine the lease deed executed between MIDC & GMIPL, dated 03 July 2010. It contains A to D, 1, 2(a) to (z), 3, 4(a) to (c), once again 4. Actually it is to be 5(a) to (f), 6 to 14 and finally attached 3 schedules.

Point 3 states about assignment to subsidiary, affiliate, group compliances. In this clause, applicability of transfer charges to be paid to MIDC is explained. As transaction concerned in present case is not followed in this clause, taxpayer has paid charges and also paid GST on reassignment of lease to HMI.

Now at point No. 7:

Delivery of possession after expiration or termination

At the expiration or termination of this lease deed, the lessee shall deliver to the lesser, the demised premises not later than 3 months from the date of such expiration or termination. However, the lessee shall be entitled to remove all or part of the erections and buildings including any fixtures or equipment then standing or being on the demised parties without any additional payments to the lesser and without the consent of the lesser.

Now here the taxpayer (GMIPL) can take stand that this is not expiration or termination, it is a re-assignment. But in general term, non-continuation smells as breaking / termination.

The lessee shall be entitled to remove--- the meaning of this clause taken by this office is whatever left behind on leased land is also a part of leased land. And consideration received for that is to be taxed as part of leased service.



From Deed of convenience for buildings & superstructures dated 29/12/2023, it is observed that the buildings are not removed but consideration at Rs. 214,36,36,237 /- is to be obtained from HMI.

The ownership of the construction on the leased land is not established with the lessee. Even if the possession of the construction is accompanied by a certificate of completion while returning the lease, it is considered a lease service and should be taxed accordingly. It is not possible to separate the two components as the leased land and the construction work on it.

4. HEARING

Preliminary e-hearing in the matter held on 27.11.2024. Mr. Saurabh Kanchan, Partner Deloitte requested for admission of the application. Jurisdictional Officer Mr. Jawahari Y Purkar, Deputy Commissioner of SGST, also appeared.

The application was admitted and called for final hearing on 06.02.2025. Ms. Priyanka, Advocate and Authorized Representative of the applicant, appeared and made oral and written submissions. Jurisdictional Officer, Mr. Jawahari Y Purkar, Deputy Commissioner of SGST appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

5.1 General Motors India Private Limited, having its manufacturing facility at Plot No. A-16, MIDC Phase expansion II, Talegaon, Pune 410504, Maharashtra (hereinafter referred to as "GMI"/"Applicant"), is a Company incorporated and registered under the Companies Act, 1956, and was engaged in the business of automobile manufacturing. The Applicant is registered under the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 (hereinafter collectively referred to as the 'GST Act').

5.2 The Applicant has transferred to Hyundai Motor India Limited ("HMI"), having its office at Wing-A, 1401-1402, Lotus Corporation Park, CTS 18/A, Graham Firth Compound, Western Express Highway, Goregaon East, Mumbai, plot of land located at A-16, Talegaon MIDC, buildings on the said plot and certain identified assets located at the Talegaon manufacturing facility, on an itemized-asset sale basis, which the Applicant has been given to understand is intended for use by HMI for inter alia manufacturing and assembling automotive vehicles and parts distribution. HMI is an unrelated party under the applicable GST laws.

5.3 The Applicant entered into a Term Sheet dated March 13, 2023, with HMI, which provided for the key terms of the sale. The Term Sheet dated March 13, 2023, signed

by the Applicant, Chevrolet Sales India Pvt. Ltd., (CSIPL) and HMI sets out the list of assets to be transferred by the Applicant and CSIPL to HMI along with the value of each asset then agreed, as per clause 9 of the Term Sheet.

5.4 Appendix A, B and C of the Term Sheet captured the details of individual asset prices at which each such asset is planned to be transferred to HMI by the Applicant. An aggregation or a summary of these individual asset prices was contained in Schedule 1 of the Term Sheet.

5.5 Further, the items of plant and machinery proposed to be sold were mentioned in Appendix-A (9765 items) of the Term sheet along with the price of each of the assets. The buildings proposed to be sold by the Applicant, were mentioned in Appendix-B (41 buildings in total) of the Term sheet with the construction date, area, and value of each of the buildings.

5.6. Pursuant to the Term Sheet, the parties executed an Asset Purchase Agreement dated August 16, 2023 together with four subsequent amendments dated October 17, 2023, October 31, 2023, December 05, 2023 and December 18, 2023 (collectively referred to as the 'the APA') to give effect to the sale of the assets covered by the Term Sheet. The relevant principles of the said Term Sheet were incorporated into the APA for the planned sale of the identified assets from GM India to HMI. With the signing of the APA, the Term Sheet ceased to exist and was overridden by the APA.

5.7. In terms of the APA, the following assets were listed for transfer to HMI.

- Applicant to assign land lease rights for INR 529,29,18,180/- through a Deed of Assignment. Assignment of such leasehold rights in land owned by Maharashtra Industrial Development Corporation ("MIDC"), in favour of HMI.
- Applicant to sell plant and machinery at a price individually agreed for each of the 9,664 items of plant and machinery. The total aggregate value of the plant and machinery to be sold by the Applicant amounts to INR 43,52,52,372/-. The transfer of Plant and Machinery is to be undertaken through issuance of separate invoices which would specify price for each item of plant and machinery, as individually agreed and transfer of title with regards plant and machinery will occur by delivery.
- Applicant to sell 42 buildings, through a Deed of Conveyance, at a value individually agreed for each building. The total aggregate value of the buildings to be sold by the Applicant amounts to INR 214,36,36,237/-. Further, Applicant has completion certificates with respect to each of the buildings intended to be



transferred. The 42 buildings include buildings acquired by the Applicant from CSIPL (earlier covered under the Term Sheet between CSIPL and HMI).

5.8 As per Schedule 2 "Transferred Assets" read along with Annexures of Schedule-2 to the APA, the total consideration mentioned in the APA is an aggregation of the individual prices determined for each of the assts under respective category:

Sr. No.	Transferred Asset	Purchase price (In INR as per the APA)
1.	Land lease rights with respect to GM India's Talegaon manufacturing facility	529,29,18,180
2.	Plant & Machinery	43,52,52,372
3.	Buildings	214,36,36,237
4.	Total	787,18,06,789

5.9 We observe that in terms of the APA, the Applicant has transferred identified assets located at its Talegaon manufacturing facility to HMI on 29.12.2023. That these assets comprised of:

- Leasehold rights in land which were transferred by way of deed of assignment on 29.12.2023. That GST was also paid on such assignment of leasehold right.
- Plant and machinery were sold individually as per the price of each item and appropriate GST was paid on sale of such goods.
- Buildings which were owned by the Applicant were conveyed through separate deed of conveyance dated 29.12.2023. No GST was paid as applicant contended it to be neither supply of goods nor supply of services.



The questions received before this Authority and the discussion and findings in respect of these questions are as below:

5.10 Whether assignment of Lease Hold Rights of land by the Applicant in terms of the Asset Purchase Agreement qualifies as taxable supply of services under GST Laws? If yes, whether GST would apply on the price agreed for transfer of Lease Hold Rights under the Asset Purchase Agreement?

5.10.1 In the context of aforesaid question relating to assignment of leasehold rights in land, the Applicant submits that the Maharashtra Industrial Development Corporation ("MIDC") had leased a demarcated area of land (approx. 300 acres) to the Applicant vide a Lease Deed dated 03.07.2010 for a period of 95 years, for setting up factory and related offices, facilities, and infrastructure to *inter alia* undertake manufacturing and assembling of automotive vehicles. By virtue of Clause 2 (v) of the Lease Deed, it was incumbent upon the Applicant

to obtain written consent of the MIDC before assigning, underletting or parting with the possession of the Lease. Pursuant to securing such a permission sanctioned by the Regional Officer of the MIDC vide letter dated 26.12.2023, the leasehold rights (for the unexpired period) were assigned to HMI vide deed dated 29th December 2023. The Applicant has proceeded on the basis that such an assignment of leasehold rights constitutes a taxable supply of services as per Section 7(1) of the CGST Act, 2017 and has discharged tax at 18% on the said transaction on the price agreed for transfer of leasehold rights under the Asset Purchase agreement. The reply filed by the jurisdictional officer, the Deputy Commissioner of State Tax, GST Bhavan (Pune) (the "Department") broadly endorses the position put forth by the Applicant. Thus, in view of the Applicant, tax has been correctly paid on transfer of leasehold rights to HMI.

5.10.2 We observe that the Applicant has assigned land lease rights for INR 529,29,18,180/- through a Deed of Assignment. Assignment of such leasehold rights in land owned by Maharashtra Industrial Development Corporation ("MIDC"), in favour of HMI is subject to approval by MIDC.



5.10.3 Section 3(26) of the General Clauses Act, 1897 defines "immovable property" as to include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth. Applicability of the General Clauses Act, 1897 in the context of a Special Act like the CGST Act, 2017, however, is limited to areas where no express provisions are made under the said Special Act. Since the building is permanently attached to the land, thus land and building together become part of the same immovable property.

5.10.4 Scope of supply under section 7(1) of the GST Act includes all forms of supply of goods and services, including a sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made. Section 7(1A) read with Schedule II under the GST Act provides which of such supplies shall be treated as supply of goods or services. Paragraph 2 of Schedule II provides that with respect to transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, letting out of a building including a commercial, industrial or residential complex for business or commerce is the supply of services.

5.10.5 In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but as the supply of service for the purpose of the GST Act. The Deed, therefore, confers upon the applicant no better title to the Demised Premises (the premises whose lease hold rights are transferred including land and building) than a service contract of lease. The applicant can, therefore, agree to transfer to the assignee (HMI), only its right to receive the service of the lease for the remaining period after obtaining prior approval of the lessor (MIDC).

5.10.6 In the instant case, the applicant agrees to transfer the lease rights with the approval of MIDC. After the approval from MIDC, the lease rights get assigned to HMI. The leasehold rights in land are deemed to be services under paragraph 2(a) of Schedule II of CGST Act, 2017. Hence agreeing to assign such services which were being received by the Applicant from MIDC to the assignee i.e. HMI is a service. Service of leasing of land is provided by the MIDC. Now, original recipient of this service i.e. applicant has agreed to assign those service to HMI.



This agreement results in transfer of leasehold rights to HMI after the approval of MIDC. As the resultant activity of leasehold rights of land getting transferred is a deemed service under para 2 of Schedule 2, the Act of occasioning such resultant services squarely falls into the definition of Services' 2(102) of the GST Act.

5.10.7 It is evident from the above discussion that the applicant, apart from the conditional possession of the Demised Premises enjoys no title or ownership, which is central to sale of any immovable property within the meaning of section 54 of the Transfer of Property Act, 1882. The applicant's interest in the benefits arising out of the Demised Premises is limited to sub-letting or assigning in terms of the Deed, and he is capable of transferring the benefits only to that extent. The assignment, therefore, does not amount to transfer of any benefit other than leasehold rights in terms of the Deed for the unexpired period of the lease and is no transfer of any immovable property in the context of the GST Act.

5.10.8 Exemption vide Entry No. 41 of Notification No. 12/2017-CT dt. 28th June 20-17 is also not applicable in the instant case. Entry No. 41 holds that one-time

upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units is exempted from service tax. The emphasis is on one-time upfront amount on industrial plots provided by State Government Industrial Development Corporations or Undertakings. Thus when land was given by MIDC to GMI, for the first time for 95 years, for industrial use, the same may not be subject to GST. But the same is not applicable to subsequent transfer of lease hold rights. Here the seller i.e M/s GMI is not a State Government Industrial Development Corporations or Undertakings and hence benefit of Entry No. 41 of exemption Notification is not admissible to the applicant as the condition of the said entry is not satisfied. Hence, Entry No. 41 of Notification No. 12/2017 is not applicable to the Applicant.

5.10.9 The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed stands extinguished. Neither does it create fresh benefit from land other than the leasehold right. It is like a compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under other miscellaneous service (SAC 999792) and taxable @ 18% under SI No. 35 of Notification No. 11/2017 CT (Rate) dated 28/06/2017.

5.10.10 In view of the above discussions, following inferences can be drawn.

1. The applicability of the General Clauses Act, 1897 in the context of a Special Act like the CGST Act, 2017, is limited to areas where no express provisions are made under the said Special Act.
2. Section 7 (1A) read with Schedule II under the GST Act provides which of such supplies shall be treated as supply of goods or services. Paragraph 2 of Schedule II provides that with respect to transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, any lease or letting out of a building including a commercial, industrial or residential complex for business or commerce is the supply of services. In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but as the supply of service for the purpose of the GST Act. It is observed from the



impugned deed of assignment cum transfer, that there is the transfer of lease rights. The applicant can, therefore, transfer to the assignee only his right to receive the service of the lease for the unexpired period after obtaining prior approval of the MIDC on payment of the transfer fee.

3. From the facts of the case, it is evident that MIDC who owns the land has leased the allocated land to applicant for a period of 95 years, who, by virtue of the lease conditions, does not possess the right to sub-lease any part or whole of the property leased to them. However, the applicant may transfer the leasehold rights to any other person with the approval of MIDC. Thus, it is clear that the applicant holds the leasehold rights which he may agree to transfer to any other person but the applicant cannot transfer the leasehold rights to such person on his own. The only option that exists for the applicant is to request MIDC to approve such an agreement entered into by the applicant with the other person and request MIDC to approve and execute the modified deed of the lease for the remaining period. Accordingly, Applicant had agreed to transfer leasehold rights held by them in respect of the land to HMI, for Consideration and MIDC has approved the request.

4. In the case at hand, the applicant, vide the agreement has agreed to transfer their interests in the leasehold rights held by them, to HMI. Since as per the lease deed executed between MIDC and itself, the applicant can transfer their interests in the land leased to them with the approval of MIDC. As the applicant can transfer their interests only with the approval of MIDC, the compensation for parting with the interests is definitely a consideration for agreeing to transfer the interests held by applicant in the leasehold. The transaction is not a transfer of leasehold as the applicant by the clauses of Lease deed executed with MIDC is not permitted to sublet/assign without the approval of MIDC. The activity of applicant as seen from the impugned agreement executed & the approval letter of MIDC, is only a transaction in which the applicant agrees to transfer the leasehold interests it possesses for the remaining lease period in favour of HMI with the approval of MIDC in respect of the land required by HMI. Therefore, the activity is not a transfer of leasehold rights by the applicant to HMI but is an activity of agreeing to transfer the leasehold interests that the applicant holds on the land to be



leased to HMI by MIDC. The above, clearly establishes that the activity undertaken by the applicant in agreeing to transfer the interests of the leasehold rights in the land required by HMI for the furtherance of their business, against a consideration is an activity of 'agreeing to do an Act, which is a taxable service classifiable under 'Other Miscellaneous Services', with SAC 9997.

5. Since the applicant, apart from the conditional possession of the said Premises, enjoys no title or ownership, the assignment, therefore, does not amount to transfer of any benefit other than leasehold rights in terms of the Deed for the unexpired period of the lease and is no transfer of any immovable property in the context of the GST Act.

6. The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed stand extinguished. Neither does it create fresh benefit from land other than the leasehold right. It is like compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable @ 18% under Sl No. 35 of Notification No. 11/2017 –CTR dt 28/06/2017, as amended from time to time.



5.10.11

Further the decision of Hon. Bombay High Court in case of Builders Association of India (2018-VIL-166-BOM) is applicable to this case. In this case, CIDCO had given plots of land on long term lease of 60 years or more. The petitioner had argued that transfer of lease rights by the Lessor amounted to sale of immovable property. Relevant paras showing the argument of the Petitioner and the view of the Hon High Court are produced as below.

"7. The argument of Mr. Nankani learned senior counsel is that such a tax, as is demanded, cannot be levied, assessed and recovered. A long-term lease of 60 years tantamounts to sale of the immovable property, since the lessor is deprived of, by the allotment the right to use, enjoy and possess the property. Our attention is invited to section 105 of the Transfer of Property Act, 1882. The one-time premium amount is the lumpsum consideration paid for entering into the lease. Our attention is also invited to the fact that the lease of 60 years and with a statutory authority is based on the position and status of that authority. In that regard, our attention is invited to section 113 and particularly sub-section (3A)

of the MRTP Act. A new town is set up by the fourth respondent. It is a planning authority. It is a creature of the statute. Our attention is also invited to subsections (1) to (3) of section 118 of the MRTP Act. Mr. Nankani would submit that the CIDCO discharges a Government function and duty. In any event, it discharges a statutory obligation. The argument of Mr. Nankani is that by virtue of Article 36, Schedule I to the Maharashtra Stamp Act, 1958, the present transaction is treated as a conveyance. Thus, such an instrument styled as conveyance and conveying a right, title and interest in the immovable property is brought into existence. Hence, the whole transaction is akin to sale. If that is the position, then, section 7 of the GST Act cannot have any application. Once the position in law is understood in this perspective, then, there is no warrant for imposition of the GST. Our attention is invited to Schedule II of the GST Act and some of the clauses therein to urge that if the intention of the legislation was to charge GST on this one-time lease premium, then, appropriate provisions would have been inserted. They not being inserted, as there was a clear intent to leave out a transaction tantamounting to a sale. Mr. Nankani attempted to point out that one-time lease premium is different and distinct from lease rent. It is not a periodical payment, but a one time. It is not, therefore, conceivable that on such a premium, the tax could be levied, assessed and recovered. The premium is akin to Salami and our attention is invited to its plain dictionary meaning as set out in the legal dictionary....."



Hon. Bombay High Court in the said judgement has held as below
"14. On a plain reading of the GST Act, we do not see how we can agree with Mr. Nankani. Mr. Nankani also relies upon Schedule II, which is referable to section 7. These are the activities to be treated as supply of goods or services. The substantive provision section 7 in clearest terms says that the activities specified in Schedule I made or agreed to be made without a consideration and the activities to be treated as supply of goods or supply of services referred to in Schedule II would be included in the expression "supply". However, clause (a) of sub-section (1) of section 7 includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. We referred to the definitions simply to reinforce our conclusion that the CIDCO is a person and in the course or in furtherance of its business, it disposes of lands by leasing them out for a consideration styled as one-time premium. Therefore, if

one refers to Schedule II, section 7, then, Item No. 2 styled as land and building and any lease, tenancy, licence to occupy land is a supply of service. Any lease or letting out of a building, including commercial, industrial or residential complex for business, either wholly or partly is a supply of service. It is settled law that such provisions in a taxing statute would have to be read together and harmoniously in order to understand the nature of the levy, the object and purpose of its imposition. No activity of the nature mentioned in the inclusive provision can thus be left out of the net of the tax. Once this law, in terms of the substantive provisions and the Schedule, treats the activity as supply of goods or supply of services, particularly in relation to land and building and includes a lease, then, the consideration therefor as a premium/one-time premium is a measure on which the tax is levied, assessed and recovered. We cannot then probe into the legislation any further."

Thus, payment of GST on transfer of leasehold rights of a plot are held to be in accordance with law. Said decision of Hon Bombay High Court was challenged before Hon Supreme Court wherein Hon Supreme Court ruled that they do not find any good ground and reason to take a different view than the one expressed by the High Court. In view of this, the said judgement of Hon Bombay High Court is binding on this Authority.



5.10.12 Further, the question that, whether assignment/transfer of leasehold rights in land & structures standing thereon by the applicant would qualify as 'supply and liable to GST and if so, then under which section of GST Act has already been decided by the West Bengal Authority for Advance Ruling in case of M/s Enfield Apparels Ltd. In this case, it was held that the activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favor of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable @ 18%. Further similar view has been taken in UP Authority for Advance Ruling in case of M/s Fena Private Limited and in case of M/s Remarkable Industries Pvt Ltd, and by Tamil Nadu Authority for Advance Ruling in case of M/s. India Pistons Limited.

5.10.13 Further the applicant and the Jurisdictional Officer have both taken similar view in their submissions.

5.10.14 In view of this above discussion, we hold that the activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable at 18% under SI No.35 of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time.

5.11 Whether the transfer by way of sale of building by the Applicant to HMI in terms of the Asset Purchase Agreement qualifies as 'neither a supply of goods nor a supply of services' under Section 7 read with entry 5 of Schedule III of the GST Laws?

5.11.1 In the context of the issue relating to transfer of buildings, the Applicant submits that the said transaction amounts to sale of buildings and is outside the scope of GST in terms of Section 7(2)(a) of the CGST Act, 2017 read with Entry 5 of Schedule III since it is neither supply of goods nor supply of services. The Applicant also submits that they have paid stamp duty on the value of the building wherein the title to the immovable property has been transferred to the buyer. On this basis, no GST has been paid by the Applicant.

5.11.2 The Department has however espoused a view in their reply that the transaction ought to be considered as a leasing service since ownership of the construction on the leased land is not established with the lessee, even though the possession of construction is accompanied by a completion certificate. The reply of the Department further avers that it is not possible to separate the two components viz. the leased land and the construction work on it.

5.11.3 The Applicant submits that the ownership of the buildings constructed on the plot even though leased by MIDC was always with the Applicant de jure and de facto. That he being the owner of buildings, the Applicant transferred the ownership of buildings, through a Deed of Conveyance on 29.12.2023, at a value individually agreed for each building. The total aggregate value of the buildings received by the Applicant from HMI for this transfer amounted to Rs. 214,36,36,237.

5.11.4 The Applicant submits that in terms of Section 108(h) of the Transfer of Property Act, 1882 ("TPA"), which reads as follows:

"the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards, all things

which he has attached to the earth: provided he leaves the property in the state in which he received it:"

Applicant infers that from a plain reading of the afore-quoted provision that the ownership of structures constructed on the land lie exclusively with the lessee.

5.11.5 Applicant submits that the essence of Section 108 of the TPA is also mirrored in Clause 7 of the Lease Deed dated 30.07.2010, which stipulates that the lessee (i.e. the Applicant) is entitled to remove all erections and buildings without any additional payments to and without the consent of MIDC.

5.11.6 We observe that Lease Deed dated 03.07.2010 is the basic lease contract which granted leasehold rights to the lessee, M/s GMI. Its clause no. 1 is reproduced as below.

*"1. In consideration of the sum of Rs.8,00,00,000/- (Rupees Eight Crores Only) paid by the lessee in the manner provided under the Agreement to Lease to the Lessor which amount is further defined as "Premium Payment", more particularly specified hereinafter, as premium and of the rent hereby reserved and of the covenants and agreements on the part of the Lessee hereinafter contained the Lessor both hereby demise unto the Lessee ALL THAT piece of land known as Plot No. A-16 in the Talegaon Industrial Area and outside the limits of Pune Municipal Council , within the Village limits of Navlakh Umbre in Maval Taluka and Registration Sub-District, Vadgaon Maval District and Registration District Pune in aggregate admeasuring 300.00 (three hundred) acres or thereabouts, as more particularly described in the First Schedule here under written and shown surrounded by a red coloured boundary line on the plan annexed hereto together with the buildings and erections now or at any time hereafter standing and being thereon **AND TOGETHER WITH** all rights, easements and appurtenances therein belonging **EXCEPT AND RESERVING** unto the Lessor all mines and minerals in and under the land or any part thereof **TO HOLD** the Demised P[remises unto the Lessee for the term of 95 (ninety five) years subject nevertheless to the provisions of the Maharashtra Land Revenue Code, 1966 and the rules there under **PAYING THEREFORE** yearly during the said term unto the Lessor at the Office of the chief Executive Officer of the Lessor (hereinafter referred to as "the Chief Executive Officer" which expression shall include any other Officer to whom the duties or function of the chief Executive Officer, Maharashtra Industrial Development Corporation , may be assigned) or as otherwise required the yearly rent of Re.1/- (Rupee One). the said rent to be paid in advance without any deductions whatsoever on or before the 1st day of January in each and every year."*



5.11.7 This clause of the Lease Deed clearly provides what is to be demised unto the Lessee. It provides that 'all that piece of land known as Plot No. A-16 in the Talegaon Industrial Area and outside the limits of Pune Municipal Council , within the Village limits of Navlakh Umbre in Maval Taluka and Registration Sub-District, Vadgaon Maval District and Registration District Pune in aggregate admeasuring 300.00 (three hundred) acres or thereabouts, as more particularly described in the First Schedule here under written and shown surrounded by a red coloured boundary line on the plan annexed hereto together with the buildings and erections now or at any time hereafter standing and being thereon' is to leased to the lessee.

Thus, this 'Lease' consists of the following properties.

1. Piece of land known as Plot No. A-16 in the Talegaon Industrial Area which is about 300 acres.
2. Currently standing buildings and erections.
3. Buildings and erections standing at any time hereafter and being thereon.

Thus, the Lease Deed dated 03.07.2010 clearly stipulates that the 'lease' would be of 300 acres of plot of land together with the buildings and erections now or at any time hereafter and being thereon. The lease also includes any buildings and structures currently present or built in the future, along with all associated rights and access, except for any underground mines and minerals, which remain with the Lessor. As the 'lease' includes the lease of buildings , currently present or built in the future, the lessee holds only the leasehold rights towards the buildings and not the ownership rights of buildings built on leased land with the approval of MIDC.



5.11.8 In this context, it is necessary to go through the provisions of lease under the Transfer of Property Act, 1882. It defines a lease as below.

Section 105 - Lease Defined

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, services, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on the terms of such payment."

Thus, lease is transfer of the right to use property for a specific period of time in exchange for rent or consideration as agreed upon.

Further, section 108 provides for rights and liabilities of lessor and lessee. The relevant provisions are produced as below.

SEC 108. Rights and liabilities of lessor and lessee. —

Rights and Liabilities of the Lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

This clause establishes the legal principle that any additions, improvements, or structures erected on the leased land become part of the leasehold property. Consequently, the lessee does not acquire independent ownership rights over any such buildings or constructions made during the subsistence of the lease. Rather, they remain subject to the lease terms and form an integral part of the property under lease.

5.11.9 Section 108 of the Transfer of Property Act, 1882, particularly clauses (a) to (p), stipulates that a lessee has only the right to use and enjoy the leased property in accordance with the lease conditions and does not acquire proprietary rights over structures erected on the land. Clause (h) of section 108 of Transfer of Property Act, 1882 and Section 54 of the Maharashtra Land Revenue Code, 1966, explicitly provides that upon termination of a lease or in the event of unauthorized possession, any buildings, constructions, or crops on the land may be forfeited or removed, further reinforcing that the lessee does not retain ownership over such structures.

5.11.10 A very important aspect is that, the lease agreement between the lessor and lessee expressly states that "the lease of land includes the lease of buildings presently existing as well as those constructed in the future." This unequivocally establishes that the lessee does not acquire separate ownership over any buildings constructed with the permission of the lessor, as they are deemed to be part of the leased property and subject to the lease conditions.

5.11.11 Accordingly, any claim by the lessee asserting ownership of the buildings constructed on leased land is untenable and contrary to the governing legal provisions and the express terms of the lease agreement. As the lessee does

not have ownership over the buildings, there is no question of lessee making sale of such buildings.

5.11.12 We may further peruse following relevant terms of the lease deed dated 03.07.2010 to understand the nature of lease.

1. In consideration of the sum of Rs.8,00,00,000/- (Rupees Eight Crores Only) paid by the lessee in the manner provided under the Agreement to Lease to the Lessor which amount is further defined as "Premium Payment", more particularly specified hereinafter, as premium and of the rent hereby reserved and of the covenants and agreements on the part of the Lessee hereinafter contained the Lessor both hereby demise unto the Lessee ALL THAT piece of land known as Plot No. A-16 in the Talegaon Industrial Area and outside the limits of Pune Municipal Council , within the Village limits of Navlakh Umbre in Maval Taluka and Registration Sub-District, Vadgaon Maval District and Registration District Pune in aggregate admeasuring 300.00 (three hundred) acres or thereabouts, as more particularly described in the First Schedule here under written and shown surrounded by a red coloured boundary line on the plan annexed hereto together with the buildings and erections now or at any time hereafter standing and being thereon **AND TOGETHER WITH** all rights, easements and appurtenances therein belonging **EXCEPT AND RESERVING** unto the Lessor all mines and minerals in and under the land or any part thereof **TO HOLD** the Demised P[remises unto the Lessee for the term of 95 (ninety five) years subject nevertheless to the provisions of the Maharashtra Land Revenue Code, 1966 and the rules there under **PAYING THEREFORE** yearly during the said term unto the Lessor at the Office of the chief Executive Officer of the Lessor (hereinafter referred to as "the Chief Executive Officer" which expression shall include any other Officer to whom the duties or function of the chief Executive Officer, Maharashtra Industrial Development Corporation , may be assigned) or as otherwise required the yearly rent of Re.1/- (Rupee One). the said rent to be paid in advance without any deductions whatsoever on or before the 1st day of January in each and every year.

2. The Lessee with intent to bind all persons into whosoever hand the Demised Premises may come doth hereby covenant with the Lessor as follows:

(e) Not to make any excavation upon any part of the Demised Premises nor



remove any stone, sand, gravel, clay or earth therefrom except for the purpose of forming foundations of buildings and/or machinery or for the purpose of executing any work pursuant to the terms of this Lease Deed.

(f) Not to erect any building, erection or structure except a compound wall and steps and garages and necessary adjuncts thereto as hereinafter provided on any portion of the said land outside the building line shown upon the said plan hereto annexed and as further referenced in the First Schedule.

(l) Not at any time during the Lease Term to erect any building, or structure except in accordance with the Development Control Rules set out in the second Schedule hereunder.

(m) To use, and/or allow affiliates and captive vendors to use, the Demised Premises for setting up a factory or industry and related offices, facilities and infrastructure for the purpose of inter alia manufacturing automotive vehicles and related components and operations including, but not limited to assembly and manufacture of cars, trucks, engines, transmissions, axels, chassis, and other related parts and sub-assemblies, ancillary products, design, engineering, research activities and other related functions associated with the business activities of the Lessee in accordance with the MIDC Zoning regulations as may be applicable for the zone to which the Demised Premises relates, but not for the purpose of a factory for any of the obnoxious industries specified in the annexure set out in the Third Schedule hereunder written and not to use the Demised Premises or any part thereof for any other purpose nor for the purpose for any factory which may be obnoxious, offensive by reason of emission of odour, liquid-effluvia, dust, smoke, gas, noise, vibrations or fire-hazards and shall duly comply with the directions which may from time to time be issued by the said Maharashtra Pollution Control Board with utmost promptitude for the purpose of preventing any air pollution by reason of any such emission of odour, liquid-effluvia, dust, smoke, gas or otherwise howsoever.

(n) No building or structure to be erected hereafter shall be commenced or any structural alteration or improvement shall be carried out unless and until specification, plans, elevations, sections and details thereof shall have been submitted by the Lessee in triplicate for scrutiny of the Executive Engineer, and the same is carried out in accordance with the MIDC



Development Control Rules and the norms as laid down by the planning Authority, The approval for the same shall be given within 15 (fifteen) working days for the submission of all relevant documents. If within such 15(fifteen) working days of the Executive Engineer fails to intimate in writing to Lessee his refusal or sanction with or without modifications or directions, the aforementioned specifications plans, elevations, sections and details thereof shall be deemed to have been approved and sanctioned.

(p) Both in the construction of any building or erection on the Demised Premises and at all times during the continuance of the Lease Term to observed and to conform to the Building Regulations and to all by-laws, rules and regulations of the municipality/local authority or other body having authority in that behalf and any other statutory regulations as may be in force for the time being relating in any way to the Demised Premises and any building thereon.

(t) To permit the lessor or the Chief Executive Officer or the Executive Engineer, and the Officers, Surveyors, Workmen or others employed by them from time to time and at all reasonable time of the day during the Lease Term hereby granted after twenty four hour's previous notice to enter into and upon the Demised Premises and to inspect the state of repairs thereof and if upon such inspection it shall appear that any repairs are necessary, they or any of them may by notice to the Lessee call upon them to execute the repairs and upon their failure to do so within a reasonable time the Lessor may execute them at the expenses in all respects of the Lessee.



5.11.13 In light of the provisions set forth in the lease agreement, the applicant's assertion that ownership of the buildings rests with them is unequivocally contrary to the agreed terms. Clause at Sl no.1 of the Lease Deed clearly provides that the 'lease' includes plot of land and the current or future buildings that may come on the said plot. Ownership of any structures erected on the leased land—constructed expressly for the purpose contemplated in the lease—remains vested in the lessor. The agreement expressly provides that the lease of the land is solely for establishing a manufacturing facility for automotive engineering.

5.11.14 Consequently, the lease of the land and the construction of the buildings are deemed inseparable, with the buildings constituting an integral part of the leasing transaction. In the absence of any transfer of title to the leased land, the lessee is precluded from asserting ownership of the buildings and may only assign its leasehold interest therein.

5.11.15 When a lessor leases a parcel of land to a lessee with the permission to construct buildings, the legal ownership of the land remains with the lessor, and the lessee acquires only possessory rights over the land as per the terms of the lease agreement. The lessee may enjoy the right to use and occupy the buildings during the lease term but does not have the authority to transfer ownership of the buildings separately from the land. The lessee may, subject to the lease agreement, remove movable fixtures and certain attachments to the land before the lease expires, provided such removal does not cause damage to the property. Under the Transfer of Property Act, 1882, section 54, a sale is defined as the transfer of ownership in exchange for a price paid or promised, or part-paid and part-promised. As the lessee does not have ownership rights over the plot of land and the buildings over it, no sale of immovable property can take place.

5.11.16 The Applicant submits that there are various documents based on which he contends that the ownership of buildings lies with the Applicant. It is discussed as below.



The Applicant contends that the Lease deed with MIDC dated 03.07.2010- Clause 2(v) stipulates that the Applicant was required to seek previous consent before parting with the Demised Premises. The Demised Premises refers to the premises described in the Lease Deed which is circumscribed as land only. This points out that building is not included under the scope of lease deed. The Applicant being lessee was granted permission to construct a factory and MIDC was not at all concerned with the buildings.

The applicant's reliance on clause 2(v) to determine the scope of lease is misplaced as the clause 1 clearly states as to what is being leased. This clause clearly provides what is to be demised unto the Lessee. It provides that 'all that piece of land known as Plot No. A-16 in the

Talegaon Industrial Area and outside the limits of Pune Municipal Council , within the Village limits of Navlakh Umbre in Maval Taluka and Registration Sub-District, Vadgaon Maval District and Registration District Pune in aggregate admeasuring 300.00 (three hundred) acres or thereabouts, as more particularly described in the First Schedule here under written and shown surrounded by a red coloured boundary line on the plan annexed hereto **together with the buildings and erections now or at any time hereafter standing and being thereon'**

2. The Applicant contends that the Lease deed with MIDC dated 03.07.2010- Clause 7 stipulates that the Lessee (i.e. the Applicant) is entitled to remove all or part of the erections and buildings including any fixtures or equipment then standing or being on the Demised premises without any additional payments to the Lessor or permission from the Lessor.

This clause does not indicate that the transferable ownership right in respect of the buildings on the plot is created for the lessee. The lessee has to remove any accretions on the lease at the time of end of the lease.

In this case, there is no end or lapsing of the lease agreement. Only, the new incumbent (HMI) is replacing the original lessee (GMI) in the lease for remaining tenure of the lease. The accretions on the plot of land have become part of the lease and it is only the leasehold rights of the plot including the structures on it is being assigned to new lessee(HMI)

3. The Applicant submits that the Letter of Consent issued by MIDC dated 26.12.2023 was limited to the interest in the lease.

The first para of this letter of consent refers to the original Lease as 'Lease of above plot of land bearing Plot A-16 admeasuring 1213924 sq.m. and the building and erected thereon in the manner specified in the said Lease.' Consent for transfer and assignment of lessee's interest in the said Lease has been granted.

4. Deed of Assignment dated 29.12.2023- Recital C and recital G clearly describes the fact that ownership of the Structures on the Demised Premises lies with the Applicant.

It is lease rights that have been acquired by the Applicant. His reference to having acquired ownership rights over buildings is contrary



to the terms of Lease Deed dated 03.07.2010 and provisions of Transfer of Property Act, 1882. The document prepared by the Applicant himself does not prove his own contention.

5. Deed of Conveyance dated 29.12.2023- Recital C clearly describes the fact that ownership of the Structures on the Demised Premises lies with the Applicant.

Further applicant quotes Deed of Conveyance dated 29.12.2023- Clause 3.1 and 3.3 which stipulates that the primary covenant for conveyance which reflects that the Applicant has parted with the ownership of the Structures as well as handed over the title deeds and relevant approvals. Clause 4 Frames the liability of applicable Stamp Duty in respect of the Purchaser thereby indicating that there is a conveyance in immovable property.

5.11.17 While a conveyance deed is a crucial piece of evidence in establishing ownership, it is not the only document that may be required to prove ownership conclusively. Other documents may also be necessary to establish ownership such as Title deed which proves that the seller had the legal right to transfer the property, Mutation records in the Government records to reflect the new owner, encumbrance certificates and tax receipts also are necessary to establish ownership. A conveyance deed alone may not suffice if there are disputes or competing claims to the property. Courts may require additional evidence to establish ownership. It is necessary to supplement the conveyance deed with other legal documents and records to conclusively establish ownership. Mere registration of a conveyance deed will not suffice without additional evidence of a clear marketable title. The Hon'ble Supreme Court in the case of Raghunath & Ors Vs. Radha Mohan & Ors reported in AIR 1972 (SC) 776 held that a conveyance deed is an important document to prove the transfer of ownership from seller to the buyer. However, the conveyance deed alone is not conclusive proof of ownership. It must be supported by other evidence such as proof of sellers title to the property, evidence of possession, absence of encumbrances or competing claims etc. Further possession itself is a relevant factor but not conclusive. Possession must be supported by a valid title to be legally recognized. A clear and marketable title is essential to proving ownership.



In this case, GMI does not have ownership rights over the buildings as discussed in Para---. Hence, due to lack of transferable ownership, transfer is only in respect of Leasehold rights. What is received by the transferee is the Lease which includes plot of land and the structures on it.

5.11.18 The case of R.V. Bhupal Prasad Vs. State of Andhra Pradesh reported in (1995) 5 SCC 698 by the Supreme court deals with the right of lessee and land owners, particularly in the context of lease agreement and the ownership of structures built on the leased land. In the said case the agreement allowed the lessee to construct buildings on the leased land. The Supreme court held that during the lease term the lessee has the right to use and enjoy the structures built on the leased land as per the terms of the lease agreement. After the end of the lease term, the ownership of structures reverts back to the landowner, unless the lease agreement provides for a different arrangement. The rights and obligations of the lessee and landowner must be determined based on the specific provisions of the lease agreement. This shows that the lessee does not have complete and absolute ownership over the structures and has the right only to use and enjoy the same. Therefore, by merely issuing a conveyance deed by the lessee to a third party does not establish ownership over the buildings/structures, unless it is evident from the lease agreement that they had the ownership right over the same. Thus, the argument that existence of a conveyance deed establishes the ownership of the lessee over the structures built on leasehold land is not legal and correct.



5.11.19 The Applicant has quoted following judgements in support of his stand.

1. Narayan Das v. Jatindranath [MANU/PR/0070/1927]
2. K.A. Dhairyawan (Dr) v. J.R. Thakur, [1958 SCC OnLine SC 39]
3. Citizen Credit Co op Bank vs. St. Sebastian Homes Co-op Society Limited [MANU/MH/7300/2024],
4. R.G. Hiremath v. T. Krishnappa [AIR 1978 Kar 13]

Essence of all the above decisions is that the clauses of the lease deed are crucial in understanding the intention of the parties. In this case, MIDC clearly intends to lease not only plot of land but also the current buildings and the buildings that may be built at a later point of time during the period of lease.

Thus the facts of the case are clearly different and the reliance placed on these judgements is misplaced.

5.11.20 Thus, there is no sale of building but transfer of leasehold rights from the Applicant to HMI. When the Lease is assigned to HMI, it means leasehold rights in the land and the building thereon gets assigned to HMI. The consideration may have been decided separately for each of these parts, but transfer of leasehold rights is for the entire 'Lease'. The 'Lease' includes land and buildings thereon, which is as per the terms of Lease Deed as well as provisions contained in section 108(d) of the Transfer of Property Act, 1882. Thus, transfer/assignment of leasehold rights are liable to tax under GST Act, being the service provided in terms of agreeing to assign leasehold rights in the building. As building is part of the Lease, there cannot be sale of the building as the applicant does not hold ownership rights in the buildings constructed on the plot. Thus, though the consideration for transfer of building has been shown separately, it is integral part of the total consideration received for agreeing to assign the leasehold rights in the 'Lease' and is liable to tax under GST Act under "Other miscellaneous service" (SAC 999792) and taxable at 18% under SI No.35 of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time.



5.12 Whether the sale of items of plant and machinery in terms of the Asset Purchase Agreement qualifies as taxable supply of individual goods under GST Laws? If yes, whether GST would apply on the price agreed between the parties for the sale of each such items under the Asset Purchase Agreement, as per classification and rate applicable to each item?

5.12.1 The Applicant submits that the itemized sale of plant and machinery, at individually agreed prices, amounts to transfer of property in goods and falls within the ambit of Section 7(1) (a) of the CGST Act, 2017. Thus, in view of the Applicant each item of plant and machinery is liable to tax at the applicable rate of tax that is notified vide Notification No. 1/2017 – C.T. (Rate) dated 28.06.2017 on the price agreed between the parties for the sale of each such item under the Asset Purchase Agreement. The reply filed on behalf of the Department endorses the position put forth by the Applicant. The Applicant has paid on sale of items of plant and machinery to HMI on prices agreed inter-se Hyundai India and the Applicant.

5.12.2 We observe that the sale of each identified item of plant and machinery under the APA amounts to individual taxable supply of goods and GST would be applicable on each of the assets as per their individual classification and rate, on prices negotiated and specified in the APA for each asset.

5.12.3 The Applicant, as per the APA dated August 16, 2023, has decided to sell various machinery and equipment outlined therein to HMI. Further, the price of each of these plant and machinery has been specifically agreed and stands outlined in Annexure - A of Schedule 2 to the APA.

5.12.4 We observe that the APA also enlists the price of plant and machinery, equipment, etc, to be transferred to HMI in Schedule 2. It is relevant to note that under the APA, the plant and machinery to be sold are categorically listed with the intention to sell each of these items independently, as per the individual prices agreed that is the value taxable as per the applicable HSN rates on such prices. Hence, the 9,664 items to be sold to HMI would be sold for the consideration specific to each of the assets in the given list at the applicable GST rates.

5.12.5 Further, since the underlying transaction in the present case involves supply of goods, it is relevant to understand the meaning of the term "goods". The term 'goods' is defined in S. 2(52) of the CGST Act to mean every kind of movable property other than money and securities, but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

5.12.6 Further, 'capital goods' is defined in Section 2(19) of the CGST Act as goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

5.12.7 In the instant case, the Applicant has sold to HMI the plant and 33 machinery, which are undisputedly goods. These goods were capitalised in GMI books. Thus, the plant and machinery, to be sold in the present case qualify as a supply of goods in the present case and are liable to tax under GST Act.

5.12.8 With respect to the value at which tax is to be paid, we find that Section 18(6) of the CGST Act, 2017, reads as under: -

"In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit

taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under Section 15, whichever is higher"

In the light of the aforesaid provision, if the applicant has taken input tax credit on the said capital goods, the value of the goods shall be determined in terms of Section 18(6) of the CGST Act, 2017.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 31/23-24/2024-25/B-

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Mumbai, dt. 10/03/2025

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1: - Whether assignment of Lease Hold Rights of land by the Applicant in terms of the Asset Purchase Agreement qualifies as taxable supply of services under GST Laws? If yes, whether GST would apply on the price agreed for transfer of Lease Hold Rights under the Asset Purchase Agreement?

Answer: - Yes, assignment of Lease Hold Rights of land by the Applicant in terms of the Asset Purchase Agreement qualifies as taxable supply of services under GST Laws. GST would apply on the price agreed for transfer of Lease Hold Rights under the Asset Purchase Agreement. The activity of assignment is in the nature of agreeing to do the transfer of the applicant's leasehold rights in favour of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable at 18% under SI No.35 of Notification No. 11/2017 - CT (Rate) dated 28/06/2017, as amended from time to time

Question 2: Whether the transfer of building by the Applicant to HMI in terms of the Asset Purchase Agreement qualifies as 'neither a supply of goods nor a supply of services' under Section 7 read with entry 5 of Schedule III of the GST Laws?

Answer: - No, the transfer by way of sale of building by the Applicant to HMI in terms of the Asset Purchase Agreement does not qualify as 'neither a supply of goods nor a supply of services' under Section 7 read with entry 5 of Schedule III of the GST Laws. Transfer of building does not constitute to be 'sale of building'. Transfer is in the nature assignment of leasehold rights in the building. The activity of assignment is in the nature of agreeing to do the transfer of the applicant's leasehold rights in favour of the assignee. It is a service classifiable



under "Other miscellaneous service" (SAC 999792) and taxable at 18% under SI No.35 of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time

Question 3: Whether the sale of items of plant and machinery in terms of the Asset Purchase Agreement qualifies as taxable supply of individual goods under GST Laws? If yes, whether GST would apply on the price agreed between the parties for the sale of each such items under the Asset Purchase Agreement, as per classification and rate applicable to each item?

Answer: Yes, the sale of items of plant and machinery in terms of the Asset Purchase Agreement qualifies as taxable supply of individual goods under GST Laws. GST would apply on the price agreed between the parties for the sale of each such items under the Asset Purchase Agreement or the amount of input tax credit availed, if any, on such capital goods reduced by such percentage points as may be prescribed, which ever is higher, as provided under Section 18(6) of the CGST Act, as per classification and rate applicable to each item



D.P. Gojamgunde
D.P. GOJAMGUNDE
(MEMBER)

Priya Jadhav
PRIYA JADHAV
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

