THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 36 / 2021
Date : 16-07-2021

Present:

1. Dr. M.P.Ravi Prasad
   Additional Commissioner of Commercial Taxes . . . . Member (State Tax)

2. Sri. Mashhood Ur Rehman Farooqui,
   Joint Commissioner of Central Tax, ... Member (Central Tax)

1.	Name and address of the applicant	M/s CHEP INDIA PRIVATE LIMITED, C/o K.M.Trade Link, Survey No.159/2 & 160/2, Hanchipura, Mallarabaawadi Post, Kasaba Hobli, Nelamangala Taluk Bengaluru Rural District
2.	GSTIN or User ID	29AADCC3230A1ZB
3.	Date of filing of Form GST ARA-01	20.04.2021
4.	Represented by	Sri Sachin Agarwal, Chartered Accountant and Duly Authorised Representative
5.	Jurisdictional Authority – Centre	Bengaluru North West Commissionerate, North West Division-3, Range ANWD-3
6.	Jurisdictional Authority – State	LGSTO-65A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs.5,000/- under KGST Act vide CIN SBIN21042900044499 dated 07.04.2021

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98(4) OF THE KGST ACT, 2017

M/s Chep India Private Limited, 159/2 & 160/2, Hanchipura, Mallarabaawadi Post, Kasaba Hobli, Nelamangala Taluk, Bengaluru Rural District (called as the 'applicant' hereinafter), having GSTIN number 29AADCC3230A1ZB, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule

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104 of KGST Rules, 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant, a private limited company involved in renting of re-usable unit load equipment for shared use, has sought advance ruling in respect of the following questions:

1. *Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by CHEP India Private Limited (hereinafter referred to as "CIPL" or the "applicant") located and registered in Karnataka to its other GST registration located across India (say CIPL, Kerala) would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Karnataka Goods and Services Tax Act, 2017 ("KGST Act")?*

2. *If the answer to Question 1 is yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and KGST Act read with relevant Rules?*

3. *What are the documents that should accompany the movement of goods from CUPL, Karnataka to CIPL, Kerala?*

4. *Whether movement of equipment from CIPL, Kerala to CIPL, Tamil Nadu on the instruction of CIPL, Karnataka can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and KGST Act, and thereby not liable to GST?*

5. *With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Kerala to CIPL, Tamil Nadu?*

3. **Admissibility of the application** : The applicant, filed the instant application, in relation to classification of any goods or services or both, application of a notification issued under the provisions of this Act and determination of value of supply of goods or services or both and hence and these questions are related to the issue covered under Section 97(2) of the CGST Act 2017 and hence the application is admitted.

4. **Applicant's interpretation of law** : The applicant submits their interpretation of law as under:

4.1 The applicant is an Indian Company and a wholly owned subsidiary of Brambles Limited, a company listed on the Australian Securities Exchange (ASX) and

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has its headquarters in Sydney, Australia. The Applicant is a part of this global organisation and its business is primarily renting of re-usable unit-load equipment for shared use by multiple participants within industrial and retail sector throughout the supply chain, under a business model known as "pooling". Ownership of the equipment rests with CIPL at all times, CIPL enhances performance for customers by helping them transport goods through their supply chains more efficiently, sustainably and safely.

4.2 The applicant is contemplating certain changes in its existing business model. The broad business mechanics of the proposed business model would be as follows:

4.2.1 CIPL would be consolidating the ownership of all the equipment into the state of Karnataka. Currently, while majority of the procurements/ manufacture happen in Karnataka, some of the procurements are also done from other states.

4.2.2 As the ownership of equipment would be with CIPL, Karnataka, it would be entering into the arrangement with the customer and all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges.

4.2.3 CIPL, Karnataka would thereafter lease the equipment to its other CIPL units based on their demand requirement. CIPL, Karnataka would be sending the equipment to the other unit of CIPL (say, CIPL, Kerala) under the cover of the delivery challan. CIPL, Karnataka would be raising periodical invoices for lease charges (based on number of days of usage) to CIPL, Kerala.

4.2.4 CIPL, Kerala would thereafter be issuing the equipment to its customers who would be using it for movement of their goods through the supply chain. CIPL, Kerala would be charging the lease charges to its customers based on the period for which the equipment would be used by the customers.

4.2.5 Also, there are chances that other units of CIPL, (say CIPL, Tamil Nadu) may require certain equipment from CIPL, Karnataka which are available with CIPL, Kerala (under lease from CIPL, Karnataka). In such a case, basis instructions from CIPL, Karnataka, CIPL, Kerala would transfer the equipment to CIPL, Tamil Nadu. In such a case, the moment equipment reaches CIPL, Tamil Nadu, CIPL, Karnataka would stop charging CIPL, Kerala and start charging CIPL, Tamil Nadu towards lease charges (basis number of days of usage). Further, CIPL, Kerala would charge CIPL, Karnataka a consideration for facilitation / arrangement of movement of equipment to CIPL, Tamil Nadu basis the instruction.

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5. Regarding the applicant's interpretation of law and/or facts in respect of the questions posed for advance ruling, the applicant submits as under:

5.1 The GST is introduced from 01.07.2017 to replace the various indirect tax levies and is a destination and consumption based tax which is levied on the supply of goods or services or both. GST is levied and collected on value addition at each stage of production or distribution process (all points in supply chain).

5.2 The term "Supply" is defined under section 7 of the CGST Act to include –

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

. . . . .

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

5.3 As per Schedule I of the CGST Act, one of the activities to be considered as supply even if made without consideration, is "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business"

5.4 Section 25(4) of the CGST Act mentions that "A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act."

5.5 As per Section 15 of the CGST Act, 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.

5.6 As per Rule 28 of the CGST Rules which deals with valuation, in case of supply of goods or services between distinct person as specified in sub-section (4) and (5) of section 25 of the CGST Act or related persons, the value shall be,

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

(b) if the open market value is not available, be the value of supply of goods or services of the like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of the like kind and quality by the recipient to his customer who not being a related person;

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

5.7 As per Rule 55 of the CGST Rules, which deals with transportation of goods without issue of invoice. –

(1) For the purposes of –
(a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known.
(b) transportation of goods for job work.
(c) transportation of goods for reasons other than by way of supply, or such other supplies as may be notified by the Board, the consignor may issue a delivery challan.....

As per Rule 138 of the CGST Rules, which deals with e-waybill generation – "Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees –

(i) in relation to supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically."

APPLICANT'S VIEWS

The Applicant have provided their views on the questions posed by them and the same are as under:

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6. The applicant, with regard to the first question, states that the definition of supply is wide enough to include "lease" within its ambit. Also, as per point 5(f) of Schedule II, "transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration" is deemed as Service under GST.

6.1 The term "lease" is not defined under the GST law. Accordingly, the applicant draws reference to the Indian Accounting Standards (Ind AS) 116 which provides for principles for the recognition, measurement, presentation and disclosure of leases in the books of account. As per the Ind AS, lease is defined as *"A contract, or part of a contract, that conveys the right to use as asset (the underlying asset) for a period of time in exchange for consideration"*. Also, 'lease' is defined in Section 105 of the Transfer of Property Act, 1882 in relation to immovable property as under –
"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, service 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 such terms."

6.2 Accordingly, the applicant states that any lease transaction is deemed as supply of services as per Schedule II since it involves the transfer of right to use any goods for consideration.

6.3 The applicant states that in the current case, CIPL, Karnataka also transfers the right to use the equipment for a period of time to the third party customers in Karnataka and other CIPL registration across India for periodical considerations.

6.4 In respect of the customers in Karnataka, the applicant is considering the transaction as leasing of equipment basis the explanation provided above, CIPL, Karnataka is discharging GST on the invoice amount which is computed basis period of usage of equipment.

6.5 Regarding the issue whether lease transaction can be entered into between different registrations of the same company, the applicant states that Section 25 of the CGST Act has created a deeming provision basis which two registrations of the same company are considered as distinct persons under GST. Accordingly, there can be supply of goods or services between such registration even in case no consideration is involved as per the entry in Schedule I of the CGST Act.

6.6. Basis the joint reading of Section 25 of the CGST Act and Schedule I, the transactions entered with the third party customers and the transactions entered with GST registrations in other States are kept at par when it comes to determination of

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taxability under the GST. Also, entry in Schedule I or any other provisions in the CGST Act does not restrict the nature of the transaction which can be entered into between different registrations of the Company to be considered as taxable under GST. In other words, since the definition of supply contains lease within its ambit, there can be a lease transaction entered into between two different registrations of the same Company similar to the lease transaction entered with the third party customer.

6.7 Accordingly, the applicant states, in the current case, CIPL, Karnataka can enter into lease transaction with CIPL branches in other States, registered under the respective State GST legislation across India, such as CIPL, Kerala and such transaction would be taxable under GST as a lease transaction between the two branches which are deemed to be distinct entities for the purpose of GST legislation.

7. The applicant, with regard to the second question, states as under:

7.1 CIPL, Karnataka has entered into agreement with CIPL, Kerala to provide equipment on lease basis for which the consideration would be charged at an agreed rate (i.e lease charges or rental per day) depending on number of days of usage of equipment. Invoice in this regard would be raised by CIPL, Karnataka periodically on the other CIPL branches for the equipment taken on lease by them.

7.2 As per Rule 28 of CGST Rules read with Section 15 of the CGST Act mentioned in the legal background above, in case of transaction between distinct person, invoice value can be deemed as transaction value in case the recipient is eligible to take full input tax credit. Similar position has been taken by the Advance Ruling Authorities in other cases such as M/s Specsmakers Opticians Private Limited (2020 (1) TMI 63 – Appellate Authority for Advance Ruling, Tamil Nadu).

7.3 In the current case, the applicant states that since CIPL, Kerala is eligible to take entire input tax credit, the invoice value should be deemed to be the transaction value for the purpose of levy of GST.

7.4 Also, since CIPL, Karnataka is supplying goods to CIPL, Kerala pursuant to a lease arrangement and not as a result of transfer of equipment, the lease charges charged by CIPL, Karnataka should be the transaction value / deemed transaction value chargeable to GST.

7.5 The applicant also highlights the provisions of Section 18(6) of the CGST Act, which states that – "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 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

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such capital goods or plant and machinery determined under section 15, whichever is higher." The intention behind the provision is that the person should be reversing the proportionate credit availed on capital goods in case such capital goods are disposed or sold or transferred after usage. However, the said provision would be applicable only in case the person supplying capital goods as goods and not as service. In the current case since the equipment are provided by CIPL, Karnataka on temporary lease (similar to transaction of lease entered into between CIPL, Karnataka and third party customers) and not sold or disposed permanently, the provisions of Section 18(6) of the CGST Act would not be applicable, as per the applicant.

8. The Applicant, with regard to the question 3, states as under:

8.1 As per Rule 55 of the CGST Rules, when goods are transported without invoice and for reasons other than supply of such goods, a delivery challan is required to be issued for purpose of transportation of such goods.

8.2 In the present case, the movement of equipment is not in pursuance of supply of equipment but is a supply of service under the CGST Act. Accordingly, a delivery challan is required to be issued for the purpose of transportation of such goods. Also, since the lease charges would be billed basis the number of days of usage by service recipient, the equipment would be transferred to the service recipient at the inception under the delivery challan without discharging taxes and the tax would be paid based on service invoice issued periodically.

8.3 The Rule 138 of the CGST Rules, requires the consignor to issue e-way bill in case the value of goods exceeds Rs.50,000/-. Accordingly, the applicant states that they would also be issuing e-way bill along with delivery challan in terms of the said Rules.

9. The Applicant, with regard to the question 4, states as under:

9.1 The levy of GST is on the supply and the scope of supply is discussed in Section 7 of the CGST Act. Accordingly, it is necessary to determine whether the movement of equipment between CIPL Offices would qualify as supply under section 7(1) of the CGST Act. Here, the applicant states that 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:

(i) Sale is defined in section 54 of the Transfer of Property Act, 1882 in the following manner:

"a transfer of ownership in exchange for a price paid or promised or part-paid or part-promised"

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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".

(ii) 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 Siddathbai 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.

(iii) Barter is defined in the Advanced Law Lexicon to mean the exchange of goods or services without the intervention of money.

(iv) Exchange is defined in Section 118 of the Transfer of Property Act, 1882 to mean: *When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange".*

Further, the Hon'ble Supreme Court in the case of I.T.Commissioner Bombay v. Rasiklal Moneklal, AIR 1989 SC 1333 held as below:
"An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other person to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another."

(v) A 'license' is defined under Section 52 of the Indian Easements Act, 1882 to mean:
"Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

(vi) "Renting": As per Oxford English Reference Dictionary 'rent' means a tenant's periodical payment to an owner or landlord for use of land or premises.

(vii) The term 'lease' is defined in Section 105 of the Transfer of Property Act, 1882 as under:

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"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, service or any other thing or value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

(viii) The term "disposal" has been interpreted by the Hon'ble Supreme Court in the case of *Deputy Commissioner of Sales Tax v. Thomas Stephen (1988) 2 SCC 264* to mean transfer of title in goods to any other person and the expression to "dispose" means to transfer or alienate.

9.2 Basis on the above, the applicant states that all forms of supply enumerated under Section 7(1)(a) of the CGST Act involves either vesting or divesting of rights or creation of an interest or right in property or a thing. Accordingly, in order to constitute supply, the person transferring the goods would be required to transfer its specified interest/ right in property to the recipient of such goods.

9.3 The applicant states that in the present case, the equipment is owned by CIPL, Karnataka and will be leased to CIPL, Kerala in furtherance of a lease agreement between such registrations. In case CIPL, Kerala does not require the equipment, the same would be transferred to CIPL, Tamil Nadu on the basis of instructions received from CIPL, Karnataka. Such movement to CIPL, Tamil Nadu is in incidence of the obligation as a lessee under the lease agreement entered between CIPL, Karnataka and CIPL, Kerala. Further, CIPL, Karnataka raises an invoice to CIPL, Kerala for the number of days the equipment remained with it. In such a situation, since there is no transfer of interest of any kind in goods between CIPL, Kerala and CIPL, Tamil Nadu, in respect of the equipment, such a transfer of equipment would not constitute supply under Section 7(1)(a) of the CGST Act and accordingly would not be taxable under Schedule I of the CGST Act. It is only the provision of equipment on lease by CIPL, Karnataka to CIPL, Tamil Nadu which will constitute as Supply under Section 7 of the CGST Act and attract levy of GST.

9.4 The applicant also states that in such a case CIPL, Kerala is supplying the service to CIPL, Karnataka by facilitating / arranging the movement of equipment to CIPL, Tamil Nadu. Accordingly, such service of facilitating the movement of equipment would be taxable under GST in the hands of CIPL, Kerala in respect of the consideration / fee that it would receive for the service.

10. The Applicant, with regard to the question 5, states as under:

10.1 In case of supply of goods for reasons other than by way of supply, a delivery challan is required to be issued in terms of Rule 55 of the CGST Rules.

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10.2 Further, the movement of equipment between CIPL. Kerala to CIPL, Tamil Nadu per se is not taxable under GST. Accordingly, it can be said that movement of equipment are for reasons other than by way of supply. In such a case, no invoice is required to be generated under GST and the movement would be made under the cover of delivery challan in terms of Rule 55 of the CGST Rules.

10.3 The applicant also states that Rule 138 of the CGST Rules, requires the consignor to issue e-way bill in case the value of goods exceeds Rs.50,000/-. Accordingly, CIPL, Kerala would also be issuing e-way bill along with delivery challan in terms of the said Rules.

PERSONAL HEARING: / PROCEEDINGS

11. Sri. Sachin Agarwal, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

DISCUSSION AND FINDINGS:

12. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Lokesh Babu, Chartered Accountant and duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

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

14. The applicant sought advance ruling in respect of the questions mentioned at para 2 supra.

15. It is pertinent to note that the applicant is a company involved in renting of movable property and is having registrations across many States. It is contemplated that all the assets are owned by the applicant registration in Karnataka and the goods are given on rental basis. The recipients of these goods could be either his own registrations in other States or the user customers, who also might have presence in more than one State with distinct registrations.

15.1 We proceed to consider, examine & discuss each question, one at a time. The first question is *whether the transfer of assets on lease to his own branches*

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having separate registrations in other States could be termed as "Lease" and accordingly taxable as supply of services. In this regard we invite reference to Section 7(1) of the CGST Act, 2017.

15.2 The section 7(1) of the CGST Act, 2017 reads as under:

> *"Section 7: Scope of supply*
>
> *(1) For the purposes of this Act, the expression "supply" includes –*
>
> *(a) all forms of supply of goods or services of 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;*
>
> *(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."*

15.3 In view of the above, the two issues required to be decided are (i) whether the transaction of the CIPL, Karnataka with the CIPL, Kerala in providing the goods is a transaction of supply and if yes, (ii) whether it is a supply of goods or services as per Schedule II.

15.4 The applicant is a Company incorporated within India as per the Companies Act and is covered under the definition of "person" as per clause (84) of Section 2 of the CGST Act, 2017. The branch of CIPL, in other States is also under the same entity and has no separate existence under the Companies Act. The assets and liabilities of the Company is held in common and hence the assets of one branch do not have separate existence as per the Companies Act or under the Income Tax Act, 1961. They are part of the same entity. There cannot be a transfer of an asset between two persons under these Acts. Therefore, it is clear that the branch of the same company cannot enter into a lease transaction or rental transaction with another branch of the same company as per the provisions of the Companies Act or Income tax Act, 1961, as they are not transactions between two persons and no revenue could be recognized in this transaction. The assets are held in common and there cannot be distinction between assets of CIPL, Karnataka and CIPL, Kerala as

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per the Companies Act. Hence CIPL, Kerala is also possessing the goods given to it from CIPL, Karnataka as owner of the goods itself and not as a lease hold asset, as far as all the business laws of the country are concerned.

15.5 However Section 9(1) of the CGST Act, 2017 mandates that the levy of tax on the intra-State transactions of supply and Section 22 and 24 requires all taxable persons who are located in a State to obtain registration in that State. Since GST is a tax within the State and registrations are State-specific, the transactions of inter-State nature are brought under the IGST Act and the Centre is liable to collect the tax and apportion the same to the Centre and States based on the destination of such goods or services as GST is a consumption based tax. Therefore all stock transfers from one State to another state are treated as supplies and would be covered under the term "transfer". Since the registrations are state-specific, the transactions between the two entities of the same concern would be covered under deemed supplies between two deemed distinct persons. This is made clear by Section 25(4) of the CGST Act, 2017 which reads as under:

> *"Section 25(4).- A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each of such registration, be treated as distinct persons for the purposes of this Act."*

Hence the CIPL, Karnataka and CIPL, Kerala are to be treated as deemed distinct persons only for the purposes of the CGST Act, 2017 and not for any other Acts, unless such Acts also deem them as distinct persons. Hence all supplies made in the course of business from CIPL, Karnataka to CIPL, Kerala would be covered under the scope of supplies under section 7(1) of the CGST Act as between deemed distinct persons as per Section 25(4) of the CGST Act, 2017.

15.6 The applicant, with regard to the nature of the transaction, claims that the CIPL, Karnataka is the owner of the goods as all goods are procured in the name of CIPL, Karnataka. Though, it could be inferred from all the other business laws, that the ownership is vested in Company as a whole and no ownership is transferred between the branches. Since the applicant states all the goods are purchased in the account of CIPL, Karnataka, as per the provisions of the CGST Act, 2017, the goods are held to be in the account of CIPL, Karnataka as owned assets and in the account of CIPL, Kerala as leased assets, for which CIPL, Kerala is liable to pay consideration for the lease transactions.

15.7 Further, since the two entities are deemed to be distinct persons, and the transfer of goods are effected from CIPL, Karnataka to CIPL, Kerala without any transfer of ownership of such goods, the same amounts to supply of service as per

entry no. 1(b) of the Schedule II to the CGST Act which states that "any transfer of right in goods or of undivided share in goods without transfer of title thereof, is a supply of services." Hence only for the purposes of the CGST Act, 2017, the transfer of such goods on lease as per the agreement entered to between CIPL, Karnataka and CIPL, Kerala would amount to lease or renting of the goods for a consideration and hence would be a transaction of supply of services and the nature of such services is "lease", as it is for a period of time.

16. The second question is related to the value of supply. In this regard we invite reference to Section 15 of the CGST Act 2017.

16.1 Section 15(1) which is related to the transaction value being considered as the value of supply & reads as under:

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

16.2 From the above, it can be noted that the transaction value which is the price actually paid cannot be treated as the value of supply as the supplies are between the related persons, i.e. the branches of the same company. Hence we proceed to examine the following provisions of the Act.

> *"15(4) Where the value of 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.*
>
> *15(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed."*

16.3 Hence, the provisions of Valuation Rules need to be examined which are as under:

> *"Rule 28: Value of supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall –*
>
> *(a) be the open market value of such supply;*

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(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."

16.4 From the above, it can be seen that the recipient, CIPL, Kerala who is the recipient of the goods is eligible for full input tax credit on the transaction between the applicant and the CIPL, Kerala and hence the value declared in the invoice would be the value of supply of goods or services or both as per the second proviso to Rule 28 and hence would be treated as the value of such supply.

17. The third question is "what documents should accompany the movement of goods from CIPL, Karnataka to CIPL, Kerala". In this regard we invite reference to Section 31 of the CGST Act, 2017.

17.1 The impugned transaction is a supply of services and hence the applicant has to raise a tax invoice for the transaction as per Section 31(2) of the CGST Act, 2017, which reads as under:

"(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charges thereon and such other particulars, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, -

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

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(b) subject to the condition mentioned therein, specify the categories of services in respect of which –

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
(ii) tax invoice may not be issued."

17.2 Further, Rule 47 which is related to the time limit for issuing tax invoice reads as under:

"The invoice referred to in rule 46, in the case of the taxable supplies, shall be issued within a period of thirty days from the date of the supply of service;"

17.3 In the pertinent case, as the goods are moving out of the State as a consequence of a lease transaction which is a service, the applicant has the option of issuing the tax invoice either before the provision of service or after the provision of service and in case the applicant opts to issue the tax invoice after the provision of service, the time limit in terms of Rule 47 is applicable. This means to say, that there is a possibility that the invoice may not be issued at the time of provision of service.

17.4 The impugned transaction involves transportation of goods without issue of invoice and hence Rule 55 of the CGST Rules, 2017 is applicable, which reads as under:

"Rule 55: Transportation of goods without issue of invoice

(1) For the purposes of –
(a) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known
(b) Transportation of goods for job work
(c) Transportation of goods for reasons other than by way of supply, or
(d) Such other supplies as may be notified by the Board,

The consignor may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely, -
(i) . . . .
. . . .
. . . .

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(ix) . . . .

(2) . . . .

(3) Where goods are being transported on a delivery challan on lieu of invoice, the same shall be declared as specified in rule 138.

(4) Where the goods being transported for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after the delivery of goods."

17.5 Further, Rule 138 of the CGST Rules, 2017 reads as under:

"Rule 138: Information to be furnished prior to commencement of movement of goods and generation of e-way bill

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-

(i) In relation to a supply; or

(ii) For reasons other than supply; or

(iii) Due to inward supply from an unregistered person, -

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

. . . .

Explanation 2: For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods."

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17.6 From the combined reading of the rule, it is seen that the applicant is not supplying goods, but services which involve the movement of such goods given on lease/ rent and hence they are liable to issue a delivery note as per Rule 55 at the time of removal of such goods for the purposes of renting. Further, they shall also generate an e-way bill for movement of such goods as per Section 138(1) based on the details of such delivery note before the movement of such goods and consignment value of the goods shall be the market value of such goods and not the value of supply of services involved in such transaction.

18. The fourth and fifth questions are related to movement of goods from CIPL, Kerala to CIPL, Tamil Nadu on the instruction of CIPL, Karnataka and we notice the following in this regard.

18.1 Though the CIPL, Kerala is in possession of the goods, it is CIPL, Karnataka who is the owner of the goods. The CIPL, Kerala is only a lessee of the goods and they have to give the goods back on the termination of the contract of lease between CIPL, Kerala and CIPL, Karnataka and the movement back of such goods should be accompanied by a delivery note issued by CIPL, Kerala and also an e-way bill generated by CIPL, Kerala in accordance with the provisions contained in Rule 55 and Rule 138 of the CGST Rules.

18.2 In case CIPL, Karnataka instructs CIPL, Kerala, on termination of contract between them, to transfer the goods to CIPL, Tamil Nadu, then the new contract between CIPL, Karnataka and CIPL, Tamil Nadu entered. CIPL, Kerala, in such a situation, under the instructions of CIPL, Karnataka, arranges / facilitates to transport the goods to CIPL, Tamilnadu, and thus the applicant acts as an agent of CIPL, Karnataka in the said facilitation and not in independent capacity. Once the CIPL, Karnataka issued instructions to CIPL, Kerala, the contract of lease entered between them in respect of the said goods ends and the goods now held by CIPL, Kerala as the bailee of CIPL, Karnataka. Hence CIPL, Kerala would be acting in two capacities, first as an independent entity under the CGST Act for the leased goods while the lease contract of the specific goods is in force and next as a bailee of CIPL, Karnataka. Once the lease contract is over and the goods are no more under the control of CIPL, Kerala. If the goods are to be transferred immediately after the contract of lease is over, the CIPL, Karnataka should enter into the lease transaction with the CIPL, Tamil Nadu and raise a delivery note and e-way bill with ship from address as "CIPL, Kerala" and Ship to address as "CIPL, Tamil Nadu" for those specific goods which are given on lease or rent and in effect, it would amount to CIPL, Karnataka picking the goods and sending to CIPL, Tamil Nadu.

18.3 In such a case, the goods in movement is a consequence of the lease contract between the CIPL, Karnataka and CIPL, Tamil Nadu which is a supply by CIPL,

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Karnataka. The transaction is nothing but the combination of the transaction of returning back the goods on lease by CIPL, Kerala to CIPL, Karnataka and again sending the same goods on a new lease contract by CIPL, Karnataka to CIPL, Tamil Nadu. It cannot be said that the goods are moving not as a result of supply under section 7 of the CGST Act, 2017. It cannot be termed as a mere movement without any involvement of supply and the said transaction of supply of goods on rental or lease basis by CIPL, Karnataka to CIPL, Tamil Nadu and is liable to tax in the hands of CIPL, Karnataka if the transaction is between CIPL, Karnataka and CIPL, Tamil Nadu. Further the services provided by CIPL, Kerala to CIPL, Karnataka in facilitating the transportation of goods to CIPL, Tamilnadu are exigible to GST.

18.4 Alternately, CIPL, Kerala may sub-lease the goods to CIPL, Tamil Nadu and in such a case, the transaction is a supply of goods on lease by CIPL, Kerala and the movement is also occasioned by the lease contract between CIPL, Kerala and CIPL, Tamil Nadu and it would be the revenue of CIPL, Kerala and CIPL, Kerala has to generate the e-way bill and delivery challan for such movement. At the same time the contract of lease between CIPL. Karnataka with CIPL, Kerala is also in force as the main lease. Hence from the applicant's point of view, his lease contract with CIPL, Kerala is continuing and the goods leased should ultimately come back to the applicant from CIPL, Kerala and CIPL, Kerala is liable to pay lease rentals to CIPL, Karnataka.

19. In view of the foregoing, we pass the rule as follows

RULING

(1) The pallets, crates and containers leased by CHEP India Private Limited located and registered in Karnataka to its other GST registration located across India (say CIPL, Kerala) would be considered as lease transaction if the specific goods are sent on lease as per the agreement between the two entities and accordingly taxable as supply of services in terms of the provisions of the Integrated Goods and Services Tax Act, 2017 read with Section 7 of the Central Goods and Services Tax Act, 2017.

(2) The value declared in the invoice issued by the applicant would be the value on which GST has to be charged in terms of Section 15 of the CGST Act and KGST Act read with relevant Rules.

(3) The documents to be carried for the movement of goods from CIPL, Karnataka to CIPL, Kerala would be delivery note and e-way bill for the entire value of the goods transported.

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(4) The movement of goods from CIPL, Kerala to CIPL, Tamil Nadu under the instruction of CIPL, Karnataka would be as a result of a separate transaction of supply between CIPL, Karnataka and CIPL, Tamil Nadu if the terms of the contract so state. But it would be a supply of CIPL, Kerala, if it is the agreement between CIPL, Kerala and CIPL, Tamil Nadu which causes the movement of goods from CIPL, Kerala to CIPL, Tamil Nadu. Further the services of CIPL, Kerala to CIPL, Karnataka in facilitating the transportation of goods to CIPL, Tamilnadu are exigible to GST.

(5) The documents to be carried for the above movement is a delivery note and e-way bill issued by CIPL, Karnataka if the movement is as a result of supply by CIPL, Karnataka or a delivery note and e-way bill issued by CIPL, Kerala is the movement is as a result of supply by CIPL, Kerala, differentiated as per (4) above.

16.07.2021

(Dr.M.P.Ravi Prasad)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place: Bengaluru.
Date: 16-07-2021

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

3. The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru.(Range CNWD2)

4. The Asst. Commissioner, LGSTO-75, Koramangala, Bengaluru.

5. Office Folder.

Authority For Advance Ruling CHEP India ★ Karnataka, Bengaluru ★