

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. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.		AD270120013352W
GSTIN Number, if any/ User-id		27AACCM0334L1ZK
Legal Name of Applicant		M/s. MAANICARE SYSTEM INDIA PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		502 Morya Classic Co-op Soc Ltd, 5th Floor Opp. Infinity, Off Link Road, Oshiwara, Andheri (East) ,Mumbai -400053
Details of application		GST-ARA, Application No. 104 Dated 04.02.2020
Concerned officer		Division I, Commissionerate Mumbai (West)
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Recipient
B	Description (in brief) (As per applicant)	Applicant is in the business of Providing Manpower Supply to the various corporate clients. They are providing bus (50 person seating capacity) service to their employee to reach at employment place on time. Service provided by bus owner comes under Reverse charge mechanism as per Notification no. 22/2019 dated 30.09.2019.
Issue/s on which advance ruling required		➤ Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 104/2019-20/B- 14

Mumbai, dt. 01.02.2022

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. MAANICARE SYSTEM INDIA PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

Whether the Applicant (Maanicare System India Pvt Ltd) is eligible to take input tax credit on GST paid under Reverse Charge Mechanism @ 5% for hiring of buses for transportation of employees?

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.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

- 2.1 "As per Section 17(5) of the CGST Act, 2017, input credit can not be availed on Motor vehicles used for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) including leasing, renting or hiring thereof.
- 2.2 As far as input credit on Rent a cab service is concerned, applicant is providing service to client indirectly as the service charges collected by it are based on percentage of Salary payable to employees; if an employee reaches late, his/her salary will accordingly be deducted and to that extent applicant's service charge will also be reduced.
- 2.3 Applicant is paying RCM @12% on Bus service availed by it with Capacity of More than 13 seating, and are eligible to claim input Credit of same.

Applicant Submission dated 26.11.2021:-

- 2.4 The Applicant is a Private Limited Company and is engaged in the business of providing manpower services. The Applicant had entered into agreement with M/s. Renaissance Jewellery Limited for supply of manpower at their premises.
- 2.5 In order to enable its employees to reach the premises of M/s. Renaissance Jewellery Limited on time, the Applicant had arranged a bus service through, N.B.S. Travel, a proprietorship firm.
- 2.6 By virtue of Notification no. 22/2019-CTR dated 30.09.2019 w.e.f. 01.10.2019, M/s N.B.S. Travel is not required to levy GST; the Applicant, being the service recipient is liable to discharge GST under Reverse Charge Mechanism. The relevant entry of the notification is reproduced hereunder:

2.7

<u>Sl. No.</u>	<u>Category of Supply of Services</u>	<u>Supplier of service</u>	<u>Recipient of Service</u>
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

- 2.8 On perusal of the aforesaid entry, it is evident that the Applicant, being service recipient and body corporate, is liable to discharge GST on renting of motor vehicle under Reverse Charge Mechanism.
- 2.8 At the outset the Applicant would like to mention that in the application filed under Form ARA-01 it was inadvertently mentioned that GST was payable under Reverse Charge Mechanism at the rate of 6% SGST and 6% CGST or 12% IGST, which is liable to payable under Forward Charge Mechanism. However, as per the Notification no. 22/2019-CTR dated 30.09.2019 w.e.f. 01.10.2019, the Applicant being service recipient, is liable to discharge GST @ 5% under Reverse Charge Mechanism. Accordingly, the revised Question on which the Applicant seeks clarification should be read as under:

Whether the Applicant (Maanicare System India Pvt Ltd) is eligible to take input tax credit on GST paid under Reverse Charge Mechanism @ 5% for hiring of buses for transportation of employees?

SUBMISSION:

- 2.9 Applicant had hired bus service for commutation of its employees for providing manpower supply to M/s. Renaissance Jewellery Limited i.e. the said service is being used in the course of providing outward supply of manpower supply. As per the provisions of Section 16(1) of CGST Act 2017, the input tax credit used in the course or furtherance of business is allowable to the registered person. Hence, in the instant case, input tax credit shall be allowable to the Applicant.
- 2.10 Further, as per Section 16(2) of CGST Act, 2017, the registered person can claim the input tax credit provided tax invoice and service is received, liability payable under reverse charge has been discharged and return under section 39 has been furnished.
- 2.11 In the instant case, the Applicant has received the bus service, for commutation of its employees, GST liability payable shall be paid by the Applicant and GSTR-3B (return under Section 39) is being filed by the Applicant regularly. Accordingly, the conditions mentioned in section 16(2) of CGST Act 2017 are being fulfilled by the Applicant.
- 2.12 As per amended provision of Section 17(5)(b)(a) of CGST Act 2017, w.e.f. 01.02.2019, input tax credit on motor vehicles used for transportation of persons having approved seating capacity of not more than thirteen persons is not allowable. In the instant case, the bus service availed by the Applicant is 49-seater i.e. more than 13 seater. Accordingly, the same is not falling under the block credit as provided under section 17(5) of CGST Act 2017 and therefore, in the instant case, the input tax credit is not restricted under the referred Section 17(5) of CGST Act 2017.
- 2.13 The Applicant further places reliance on the following judicial precedents on the matter :
- **YKK INDIA PVT. LTD. 2020 (34) G.S.T.L. 670 (App. A.A.R. - GST - Haryana)**
 - **TATA MOTORS LTD. 2020 (41) G.S.T.L. 35 (A.A.R. - GST - Mah.)**
- It is evident from the above-mentioned rulings that input tax credit is eligible to the service recipient, for hiring of motor vehicle having capacity of more than 13 seats.
- 2.14 Based on the above facts, provisions and applying the judgements of aforesaid AARs which are similar to the case of the Applicant, it can be construed that the service of motor vehicle having capacity of more than 13 seats, is eligible as input tax credit on fulfillment of conditions enumerated under the provision of section 16(2) of CGST Act 2017 and MGST Act 2017. Accordingly, the hiring of bus service for its employees having capacity of more than 13 seats, is eligible input tax credit, after discharge of GST liability under Reverse Charge Mechanism.
- 2.15 Applicant states that the rate of GST on the services of renting of Motor Vehicle is 6% CGST and 6% SGST or 12% IGST under Notification No. 11/2017 amended vide Notification No. 20/2017 when GST charged on forward charge basis by the Service Provider and availed Input Tax credit on the same. Further, the rate of GST shall be 2.5% CGST and 2.5% SGST or 5% IGST wherein the Service provider does not avail the Input Tax Credit. Therefore, when the liability to discharge GST is on recipient, the service provider cannot avail input credit as he is not discharging the liability and accordingly, the applicable GST rates for the service recipient shall be 2.5% CGST and 2.5% SGST or 5% IGST in accordance with the provisions of Notification no. 13/2017 amended

vide notification no. 29/2019 read with Notification No. 11/2017 amended vide Notification No. 20/2017 for tax rates.

2.16 Accordingly, the Applicant shall be:

- a) eligible for availing the Input Credit of GST on Hiring of Motor Vehicle being the capacity exceeding 13 persons; and
- b) the rate of GST applicable shall be 2.5% CGST and 2.5% of SGST or 5% of IGST

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional officer was absent and in spite of specific directions to file written submissions, no written submissions have been filed.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 04.02.2021. On the preliminary online e-hearing, Shri. Deepak Patel, CA and also Authorized representative of applicant was present. Jurisdictional Officer was absent.

4.2 The application was admitted and called for final e-hearing on 26.11.2021. The Authorized representative of the applicant, Shri. Ganesh Narayan, learned CA, Shri. Paras Nath, learned CA, Shri. Jainesh Rupani, learned CA and Smt. Veenu Agarwal, learned partner were present. Jurisdictional officer was absent. Applicant was heard. Applicant was directed to produce documents to explain exact nature of transactions being undertaken by them.


05. OBSERVATIONS AND FINDINGS:

5.1 We have understood the facts of the matter, perused the documents on record and considered the submissions, both oral and written, made by the applicant. The jurisdictional officer has neither attended the hearings nor has filed any submissions in the matter.

5.2 The Applicant is a Private Limited Company engaged in the business of providing manpower services. The Applicant had entered into agreement with M/s. Renaissance Jewellery Limited for supply of manpower at their premises. For supplying such manpower (who are applicant's employees), the applicant, in order to enable its employees to reach the premises of M/s. Renaissance Jewellery Limited on time, had arranged a bus service through, M/s N.B.S. Travel, a proprietorship firm. The applicant is paying GST on reverse charge basis on the invoices received from M/s N.B.S. Travel and has asked the question whether they are eligible to avail Input Tax Credit of GST paid on reverse charge basis on the invoices received from M/s N.B.S. Travel. Thus the subject application is made only with respect to the particular transaction with M/s N.B.S. Travel.

5.3 The applicant has produced certain documents viz Invoice No 272 dated 10/6/2019 of Rs 7691422/- issued to M/s Renaissance Global Ltd, Seepz, Andheri. The supply being to a SEZ unit, no tax is charged, the net value is shown in the column of taxable sales (zero rated supply). The Annexure annexed to the said invoice shows the charges charged by the applicant to said client on the basis of man hours of various employees provided to said client-customer. Thus the applicant receives the amount on the basis of hours of work performed by the employees provided by the applicant to respective clients. The applicant has also produced copy of agreement entered into with M/s N.B.S. Travels for transport of its employees.

- 5.4 As per the said documents submitted by the applicant, particularly the agreements/bill and return annexure, related to outward supply and the agreement between the applicant and its private bus service provider (for inward supply) who is a proprietorship concerned viz M/s N.B.S. Travel, the factual position is made clear in the present case. The outward supply of present applicant is taxable supply.
- 5.5 The Applicant has placed its reliance on following AAR's judgments:
- TATA MOTORS LTD. 2020 (41) G.S.T.L. 35 (A.A.R. - GST - Mah.) and
 - YKK INDIA PVT. LTD. 2020 (34) G.S.T.L. 670 (App. A.A.R. - GST - Haryana)
- 5.6 By and large facts of said two cases are similar to the facts of the present case, only in the subject case the GST has been paid by the receiver of services while in the above referred cases the GST was paid by the provider of services. Therefore it is necessary to look into the provisions related to RCM and ITC thereof in the present case.
- 5.7 The GST Council in its 37th meeting recommended that supply of renting of motor vehicles when provided by suppliers paying 5% GST to corporate entities may be place under Reverse Charge Mechanism (RCM). Thus RCM was not recommended for suppliers paying 12% GST with full Input Tax Credit (ITC). Accordingly, Notification no. 22/2019-Central Tax (Rate) dated 30.09.2019 with effect from 01.10.2019 was issued.
- 5.7.1 The relevant entry of the said Notification no. 22/2019-Central Tax (Rate) dated 30.09.2019 w.e.f. 01.10.2019, is reproduced hereunder:



<u>Sl. No.</u>	<u>Category of Supply of Services</u>	<u>Supplier of service</u>	<u>Recipient of Service</u>
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

- 5.7.2 Thus, as per the Notification no. 22/2019-Central Tax (Rate) dated 30.09.2019 w.e.f. 01.10.2019, M/s N.B.S. Travel providing the bus service is not required to levy GST (since it is not a body corporate) when it is paying GST @ 5%. The Applicant, being the service recipient is liable to discharge GST under Reverse Charge Mechanism.
- 5.7.3 From the above notification it is clear that notification restricts the availability of ITC unless the supplier is in same line of business. But the heading of this column number three is very clear that it applies to the supplier of said service and not to the recipient of service. In the present case, the applicant is the recipient of service and not the supplier of said service. So said words shall not affect the case of the applicant here. Here, the applicant is receiving the bus service from M/s N.B.S. Travels.
- 5.7.4 Sr. No. 15 mentioned above was substituted vide Notification no. 29/2019-Central Tax (Rate) dated 31.12.2019 and the same is as under:-

<u>Sl. No.</u>	<u>Category of Supply of Services</u>	<u>Supplier of service</u>	<u>Recipient of Service</u>
15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service tax recipient.	Any body corporate located in the taxable territory.

5.7.5 Thus, as per the Notification no. 29/2019-Central Tax (Rate) dated 31.12.2019, M/s N.B.S. Travel providing the bus service is not required to levy GST (since it is not a body corporate). It does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient i.e. the applicant. The Applicant, being the service recipient is liable to discharge GST under Reverse Charge Mechanism.

5.8 Circular No. 130/2019-GST dated 31.12.2019, issued by the Board on the subject of Reverse Charge Mechanism on Renting of Motor Vehicles clarifies the above discussions. The same has been reproduced as under:-

Subject– Reverse Charge Mechanism (RCM) on renting of motor vehicles -reg.

Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

2. The GST Council in its 37th meeting dated 20.09.2019 examined the request to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them. Accordingly, the following entry was inserted in the RCM notification with effect from 1.10.19

3. Post issuance of the notification, references have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that “any person other than a body corporate, paying central tax at the rate of 2.5%” is not free from doubt and needs amendment/ clarification from the perspective of drafting.

4. The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that – (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and, (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28.6.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle

designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:— (a) is other than a body-corporate; (b) does not issue an invoice charging GST @12% from the service recipient; and (c) supplies the service to a body corporate.

6. It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at para 5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

5.9.1 Now, to answer the question whether applicant is entitled to avail Input tax credit (ITC) of GST charged on such inward supply as in the subject case, we refer to the provisions of Chapter V of the CGST Act, 2017 comprising of Sections 16 to 21.

5.9.2 Section 16 of the CGST Act, 2017, contains provisions with respect to eligibility and conditions for taking ITC. As per Section 16 (1), every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Hence, ITC in respect of receipt of services is available and can be taken. However, the credit is available subject to such conditions and restrictions and in the manner specified in Section 49 of the CGST Act.

5.9.3 We have no doubt that in the subject case, the supply of services received by the applicant is used in the course or furtherance of their business and therefore prima facie, they are eligible to take credit of GST charged by their suppliers.

5.10 While we find that the applicant is eligible to take ITC under the provisions of the CGST Act, it is to be seen whether Section 17 (5) of the said Act debars the applicant from taking credit. We find that, Section 17 (5) has been amended by CGST (Amendment) Act, 2018 (No. 31 of 2018) dated 29.08.2018 made effective from 01.02.2019 vide Notification No. 02/2019 – C.T.- 2019 dated 29.01.2019. Prior to this date Section 17 of CGST Act, 2017 read as under:-

Section 17 (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) —

5.10.1 Vide the aforesaid amendment dated 29.08.2018 made effective from 01.02.2019, Clauses (a) and (b) have been replaced with Clauses (a), (aa), (ab) and (b) and the amended Section 17 (5) (d) reads as under:-

Section 17 (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :—

(A) further supply of such motor vehicles; or

- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely:—
 - (A) further supply of such vessels or aircraft; or
 - (B) transportation of passengers; or
 - (C) imparting training on navigating such vessels; or
 - (D) imparting training on flying such aircraft;
 - (ii) for transportation of goods;
- (ab)
- (b)

5.10.2 From the above, it is clear and apparent that Section 17 (5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.02.2019. However with effect from 01.02.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver)

5.11 In the instant case, the bus service availed by the Applicant is 49-seater i.e. more than 13 seater. Accordingly, the same is not falling under the block credit as provided under section 17(5) of CGST Act 2017 and, therefore, in the instant case, (since the applicant is utilizing the services of renting of motor vehicle for business or furtherance of business), the input tax credit is not restricted to the applicant under the referred Section 17(5) of CGST Act 2017. Thus the applicant would be eligible for ITC but only with effect from 01/02/2019 only, as per above legal provisions.

06. 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)

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

Question: - *Whether the Applicant (Maanicare System India Private Limited) is eligible to take input tax credit on GST paid under Reverse Charge Mechanism @ 5% for hiring of buses for transportation of employees?*

Answer:- In the affirmative but only with effect from 01/02/2019.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(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.

