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.		**AD270220007408J**
GSTIN Number, if any/ User-id		**27AAACI7132C1ZZ**
Legal Name of Applicant		**M/s. Integrated Decisions And Systems India Pvt Ltd**
Registered Address/Address provided while obtaining user id		Plot No. 1124, 3rd and 6th Floor, Amar Mega Plex, Baner Road, Sr. No. 110, Baner, Pune-411045.
Details of application		GST-ARA, Application No. 116 Dated 25.02.2020
Concerned officer		**PUN-BST-E-001, PUNE-001, Division Pune.**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Service Provision** **Service Recipient**
	Description (in brief)	Integrated Decisions and Systems (India) Pvt Ltd, the applicant is located in Maharashtra and is primarily engaged in providing software development and support services to its holding company located outside India. The company provides transportation facility to its employees. Services are being provided for security of staffs which have female employees also. In order to carry out the said function, the applicant is availing 'renting of motor vehicles service', 'cab services'. In such cases, the applicant initially pays the entire amount and subsequently as per policy of the company, partial amount is recovered from the respective employees.
Issue/s on which advance ruling required		➢ Determination of time and value of supply of goods or services or both ➢ Admissibility of ITC of tax paid or deemed to have been paid ➢ 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- 116/2019-20/B- 113 Mumbai, dt. 16.12.2021

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. Integrated Decisions And Systems India Pvt Ltd ,** the applicant, seeking an advance ruling in respect of the following questions.

1: **Whether part recovery of 'renting of motor vehicles services' / 'cab services' from employees in respect of the transport facility provided to them would be treated as 'supply' as per provision of GST and whether GST is leviable on the same?**

2: **If answer to question no. 1 is yes, then how the value of said supply will be determined keeping in mind that employee and the applicant are related party as per provisions of GST law?**

3: **Further also if the answer to question no 1 is yes, then whether Input Tax Credit is admissible in respect of GST paid on inward supply of 'renting of motor vehicles service' which are used for 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 Integrated Decisions and Systems (India) Private Limited, 'the applicant', located in Maharashtra and primarily engaged in providing software development and support services to its holding company located outside India, provides transportation facility to its employees. Services are being provided for security of staffs which have female employees also. In order to carry out the said function, the applicant is availing 'renting of motor vehicles service', 'cab services'. In such cases, the applicant initially pays the entire amount and subsequently as per policy of the company, partial amount is recovered from the respective employees.

2.2 Applicant has paid GST as below:

Period (A)	Service charge for cab renting service (B)	GST paid on services which is treated as block credit under section 17 (5) of CGST Act (C)	Partial recovery from employees without GST (D)	GST paid on partial recovery on open market value [same as column C] (E)
July 2017 to March 2018	63, 41,489	3, 17,073	11, 79,000	3, 17,073
April 2018 to March 2019	97, 09,839	4, 85,492	17, 52,000	4, 85,492
Total	1, 60, 51,328	**8, 02,565**	29, 31,000	**8, 02,565**

2.3 *The applicant feels that, GST would not be applicable on partial recovery amount (as partial recovery from employees is not supply of services) by considering the transaction as outward supply and the company would not be eligible to avail ITC of inward supply of cab services. If in case of the company is liable to pay GST at open market value (on partial recovery amount) then ITC of GST paid on cab services would be allowed.*

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.4 *As per Section 9 of the CGST Act, GST shall be levied on supplies of goods or service. Further, the term 'supply' has been defined under Section 7 of CGST Act, 2017.*

2.5 *The applicant's business is, providing support services for software and not providing cab services to employees. It is a mere welfare and safety measure. As required by Section 7 of CGST and MGST Act, in order to constitute a supply, the same should be in furtherance of business and for consideration. In the present case, there is no furtherance of business and in fact no consideration but recovery of partial amount only, which is reimbursement of expenses. Thus, transaction between the company and their employee are not supply of service & not liable to GST.*

2.6 *Reliance is placed in the case of Posco India Pune Processing Center (P.) Ltd, wherein Maharashtra Authority for Advance Rulings held that they are not rendering any services of health insurance to their employees and hence there is no supply of services in the instant case. Hence, GST would not be applicable on part recovery transaction between applicant and its employee.*

2.7 *If GST would be payable on the said partial recovery, the value on which GST is to be paid, needs to be determined in terms of Section 15 of the CGST Act, read with CGST Rules 2017.*

2.8 *As per Section 15 (5) (a) (iii) of the CGST Act, 2017, employee and employer are treated as "related persons" and hence, valuation of the supply needs to be determined as per Rule 28 of the CGST Rules, 2017.*

2.9 *Presently, while the company is charging part of cab charges from employee, it is paying GST on full value of services. In view of Section 15 CGST and MGST Act read with Rule 28 of CGST Rules, open market value will be same which the company has paid to cab renting company.*

2.10 *As per Section 16 of the GST Act, every registered person shall be eligible to take ITC of GST paid on goods or services used or intended to be used in the course or furtherance of business. Further, in order to determine eligibility of ITC, same shall not be denied under Section 17 (5) of GST Act.*

2.11. *As per the relevant provisions of Section 17 (5) of the CGST Act in the case of renting or hiring of motor vehicles, referred to in clause (a) or clause (aa) except when used for the purposes specified therein, the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply. Hence ITC should be allowed to applicant.*

Additional Submission dated 09.11.2021

2.13 *Reliance is also placed on the ruling passed by The Authority for Advance Ruling Under GST, Uttar Pradesh in the case of M/s. North Shore Technologies P. Ltd. [2021 (49) G.S.T.L. 315 (A.A.R. - GST- U.P.)] wherein it has been held that – "arranging transport facility for the employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function."*

2.14 *As per above mentioned ruling, providing transport facility to its employees cannot said to be in furtherance of business and would not be considered as supply under GST. Therefore, transaction of recovery of optional subsidized shared transport facility would not be taxable under GST.*

Applicant Submission dated 01.12.2021:-

2.15 *Reliance is placed on the following case laws -*

a. *Maharashtra Authority for Advance Rulings in case of M/s. Posco India Pune Processing Centre (P.) Ltd [GST-ARA-36/2018-19/B-110] dated07 September, 2018*

b. *Maharashtra Authority for Advance Rulings in case of M/s. Tata Motors Limited [GST-ARA-23/2019-20/B-46] dated 25 August, 2020*

c. *Uttar Pradesh Authority for Advance Rulings in case of M/s. North Shore Technologies Pvt. Ltd. [2021 (49) G.S.T.L. 315 (A.A.R. - GST - U.P.)] dated 29 June, 2020*

The applicant submits that if recovery of "renting of motor vehicles/cab services" has been

considered as supply, then the respective ITC should be allowed as the same is used to provide outward supply of the same nature.

03. <u>CONTENTION – AS PER THE CONCERNED/JURISDICTIONAL OFFICER:</u>

OFFICER'S SUBMISSION DATED 17.11.2021: -

3.1 The taxable event, under GST Laws, is supply of goods or service. Therefore, it is necessary to examine whether any activity or transaction carried out by supplier is "supply" before levy of tax. Definition and scope of Supply has been provided in section 7 of the Act.

3.2 As per Section 7 (1) of the Act, unless all following conditions has been satisfied any transaction or activity cannot be treated as supply:

There should be involvement of two persons. It must covered under any specified form such as sale, transfer etc. It should made for consideration. It should made in the course or furtherance of business.

3.3 In the activity involved in first question (providing transport facility to employees by the applicant) the applicant and employees two persons are present as supplier and recipient of service respectively. Hence first condition is satisfied. Further, the impugned activity is in the form of sale which prescribed in section 7 (1) of the act. Thus, second condition is also satisfied. Finally, the applicant has supplied transport facility to the employees and recovered partial amount from the employees. Thus, it is clear that element of consideration is present.

3.4. As per section 2(17) of the act business includes (a) any trade, commerce, manufacture, profession, vocation, adventure, wagers, or any other similar activity, whether or not it is for pecuniary benefit; (b) any activity or transaction in connection with or incidental or ancillary to sub clause (a). The applicant is engaged in software development which squarely covered under sub clause (a) of section 2 (17) of the act. And activity of providing transport facility to the employees in connection with main business software development can also termed as incidental or ancillary to main business. Thus, said activity is carried out in course or furtherance of business.

3.5 In view of aforesaid submission, it is clear that all required conditions has been satisfied and part recovery of "renting of motor vehicle services/cab services" from employees in respect of the transport facility provided to them would be treated as 'supply' within meaning of section 7 of the act and the applicant is liable to pay tax under the act.

3.6 Further, as per section 15(1), value of supply of goods or services shall be the transaction value, which is price actually paid or payable for said supply, where the supplier or the recipient of supply are not related and price is the sole consideration for supply. However, where supplier and recipient are related parties then, in view of section 15 (4) value of supply shall be determined as

per provision of Rule 28. Rule 28 provides that value of supply of goods or services, where supplier and recipient are related persons, shall be open market value of such supply. And where open market value is not available, value shall be value of goods or service of like kind and quality. It is admitted fact the applicant and employees are related person. The applicant has received inward supply of renting of motor vehicle/ cab service from the supplier (for which consideration has been paid as per Tax invoice) which subsequently provided to the employees (for which partial amount recovered). In view of facts and circumstances of the case and provisions of Section 15 and Rule 28, value of supply (providing transport facility to the employees shall be equal to the amount paid on inward supply of renting of motor vehicle service to the suppliers which are used for transportation of employees and not amount of partial recovery made from the employees.

3.7 Finally, Section 16 (1) provides that every registered person shall subject to prescribed conditions and restrictions, be entitled to take input tax credit of input tax charged on any supply of goods or service to him which are used are intended to be used in the course or furtherance of business. However, certain credits are blocked as provided in section 17 (5).

3.8 Section 17(5)(b)(i) states that notwithstanding anything contained in sub section 1 of section 16 and subsection of section 18 input tax credit shall not be available in respect of leasing, renting or hiring of motor vehicles. In view of the above, it is clear that the applicant is not entitled to claim input tax credit of GST paid on inward supply of "renting of motor vehicle service " which are used for transportation of employees. Applicant is engaged in development and supply of software services and not engaged in " renting of motor vehicles service" and therefore benefit of provision to section 17 (5) (b) (i) cannot be allowed to the applicant.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 02.06.2021. The applicant was represented by Authorized Representatives Shri. Deepak Goyal (C.A), Smt. Mallika James (Senior Manager, Finance) and Shri. Vivek Dhaybar (Asst. Manager). Jurisdictional officer Shri. Ramesh Phadtare, Deputy Commissioner, PUN-BST-E-001, PUNE-001, Division Pune was also present. The Authorized Representatives made oral submission with respect to admission of their application.

4.2 The application was admitted and Final e-hearing in the matter was held on 09.11.2021.The Authorized representatives of the applicant, Shri. Deepak Goyal, CA, Smt. Mallika James, Senior Manager, Finance, Shri. Vivek Dhaybar, Asst. Manager and Shri. Sunil Goyal were present. Jurisdictional officer Shri. Ramesh Phadtare, Deputy Commnr. PUN-BST-E-001, Pune-1 was also present.

05. OBSERVATIONS AND FINDINGS:

5.1 We have perused the records on file, gone through the facts of the case, submissions made by the applicant as well as the department and have examined the matter in detail.

5.2 As per the submissions made, the applicant is engaged in providing software development and support services to its holding company located outside India and as a welfare, security and safety measure, the applicant is providing transport facility to its employees for which they are availing 'renting of motor vehicles service', 'cab services' from their vendors. The applicant initially pays the entire amount to concerned service providers who provide them with cab services and subsequently recovers partial amount from the respective employees who avail of the said facility. Further, the third party vendor issues bill in the name of the applicant and charges GST therein. As regard to the payment to the third party vendor, towards transport charges, the applicant recovers partial amount from the employees and bear the balance cost themselves. Applicant does not avail Input Tax Credit of tax paid on such input services received.

5.3 In view of the above, the primary question is raised by the applicant, as to whether the partial amount recovered from the employees for facilitating transport to and from the applicant company's premises through third party vendors, would be construed as "Supply of service" by the applicant to its employees.

5.4 In terms of Section 7 of the Central Goods and Services Tax Act, 2017 (**CGST Act**), for a transaction to qualify as supply, it should essentially be made **in the course or furtherance of business**. We find that, the applicant is engaged in providing software development and support services to its holding company located outside India. The provision of transport facility to the employees is a welfare, security and safety measure and is not at all connected to the functioning of their business. Further, the said activity is not a factor which will take the applicant's business activity forward.

5.5 We also find that the applicant is not supplying any transport or lease/rental of vehicle service to its employees in the instant case. Further the transport or lease/rental of vehicle service is also not the output service of the applicant since they are not in the business of providing transport service. Rather, this transport facility is provided to employees by the third party vendors and not by the applicant.

5.6 We observe that the GST is discharged on the gross value of bills raised on the applicant by the third party vendors. We also observe that the partial amounts recovered by the applicant from its employees in respect of use of such transport facility are a part of the amount paid to the third party vendors which has already suffered GST. Therefore, in the subject case, the applicant is not

providing transportation facility to its employees, in fact the applicant is a receiver of such services.

5.7 In the case of an application filed by M/s Tata Motors Limited, a similar question was raised as to whether GST was applicable on nominal amounts recovered by Applicants from employees for usage of employee bus transportation facility. This authority vide Order No. GST-ARA-23/2019-20/B-46 dated 25 August, 2020 has held that, GST is not applicable on such nominal amounts recovered from its employees.

5.8 Further reference is also made to the decision of the Uttar Pradesh Advance Ruling Authority in respect of the advance ruling application filed by M/s North Shore Technologies Private Limited. In the said matter a similar question was raised by the applicant as to whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be construed as "Supply of service" by the company to its employees. The said authority has observed that, the applicant was in the business of software development and staff augmentation services and not in the business of providing transport service. The facility provided to their employees was not integrally connected to the functioning of their business and therefore, providing transport facility to its employees cannot said to be in furtherance of business.

5.9 Accordingly, we are of view that for applicant, arranging the transport facility for their employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

5.10 Further, coming to the subsequent questions, we observe that the subsequent questions in the application would apply only when the answer of first question is in affirmative. As we are of the view that arranging transport facility to its employee is not a supply of service, accordingly the remaining questions become redundant and merit no discussion.

06. In view of the above discussions, 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 1: - Whether part recovery of 'renting of motor vehicles services' / 'cab services' from employees in respect of the transport facility provided to them would be treated as 'supply' as per provision of GST and whether GST is leviable on the same?

Answer:- Answered in the negative.

Question 2: - **If answer to question no. 1 is yes, then how the value of said supply will be determined keeping in mind that employee and the applicant are related party as per provisions of GST law?**

Answer:- Not answered in view of answer to Question No. 1 above.

Question 3: - **Further also if the answer to question no 1 is yes, then whether Input Tax Credit is admissible in respect of GST paid on inward supply of 'renting of motor vehicles service' which are used for employees?**

Answer:- Not answered in view of answer to Question No. 1 above.

MEMBER, ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

RAJIV MAGOO
(MEMBER)

T.R. RAMNANI
(MEMBER)

PLACE - Mumbai
DATE – 16/12/2021

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.