

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.	AD271220012682L
GSTIN Number, if any/ User-id	27AANCM2659M1ZR
Legal Name of Applicant	M/s. MH Ecolife E-Mobility Pvt. Ltd.
Registered Address/Address provided while obtaining user id	Sector 20, c/o NMMT City Bus Depot, Besides Turbhe Railway Station, Turbhe, Navi Mumbai, Maharashtra, 400705
Details of application	GST-ARA, Application No. 60 Dated 23.12.2020
Concerned officer	Commissionerate- Belapur, Division-III, RANGE-III.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	The applicant has entered into an Operator Agreement with NMMT wherein they shall supply, operate and maintain the electrically operated AC buses which shall be plied on the routes identified by NMMT.
Issue/s on which advance ruling required	> admissibility of input tax credit of tax paid or deemed to have been paid > determination of the liability to pay tax on any goods or services or both > Classification of services
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 60/2020-21/B- 116

Mumbai, dt. 22.12.2021

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. MH Ecolife E-Mobility Pvt. Ltd. ,the applicant, seeking an advance ruling in respect of the following questions:



1. Whether services provided by the applicant to NMMT under the Agreement, by way of supplying, operating and maintaining air-conditioned electrically operated buses are taxable and subject to GST?
2. If the answer to (i) above is yes, what will be appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant and applicable GST rate thereon?
3. Whether Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement?

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 *MH Ecolife E-Mobility Pvt. Ltd., the Applicant with principle place of business at Sector 20, c/o NMMT City Bus Depot, Turbhe, Navi Mumbai, Maharashtra, 400705, is registered under GST.*
- 2.2 *Applicant and Navi Mumbai Transport Undertaking ("NMMT") have entered into an Operator Agreement dated 25.02.2020 vide which, Applicant shall be responsible to procure and supply air-conditioned electric buses to NMMT on gross contract basis to be plied on the routes identified by NMMT. During the term of the Agreement, ownership of the buses to be vested with the Applicant.*
- 2.3 *In terms of the Agreement, the Applicant, as an Operator, will be responsible for operating and maintaining the buses by employing drivers and other staff necessary for the operation and maintenance of buses. Further, Applicant shall incur all expenses for operating the buses including expenses on repairs, maintenance, procurement of spare parts, charging of batteries etc. NMMT or a third party appointed by NMMT, shall collect appropriate fare from the passengers.*
- 2.4 *The scope of work required to be undertaken by the Company as an Operator under the Agreement is set out at Article 2 thereof. The obligations and entitlement of the Applicant under the Agreement is set out in Article 3.1.2. For rendering services under the Agreement, the remuneration received by the Company is based on the total distance travelled by each bus.*

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

The services provided by the Applicant constitute supply and are subject to GST

- 2.5 The services provided by the Applicant constitute supply defined under Section 7 of the Central Goods and Services Tax Act ("CGST Act") and are taxable under GST.
- 2.6 Based on the above, it is explicit that the Applicant is essentially transferring the goods owned by it (along with requisite personnel) to NMMT for use in return for a consideration, which qualifies as a supply of service under entry 5(f) of Schedule II of CGST Act. As the services supplied by the Operator are essentially services of rental of buses along with operation and maintenance of the same, they are akin to those described under Entry. No. 10(i) of Notification No 11/2017-C.T.(R) dtd 28.06.2017 ("Rate Notification"), falling under SAC Code 9966, which pertains to "Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient."
- 2.7 Alternatively, if the Authority decides that the services provided by the Applicant are not covered by Entry no. 10(i) supra, they shall be covered by the residual entry i.e. Entry no. 10(iii) of the Rate Notification, which pertains to "Rental services of transport vehicles with operators, other than (i) and (ii) above" and taxable at the rate of 18%.
- 2.8 Reliance in this regard is placed on the decision of the Advance Ruling Authority, Maharashtra in *In Re: SST Sustainable Transport Solutions India Pvt. Ltd.* [2019 (20) G.S.T.L. 317 (A.A.R. - GST)] wherein in a similar situation to the present facts, the Authority held that the applicant was rendering services to Nagpur Municipal Corporation, by way of giving out on rent/hire, buses which were further used by NMC for transportation of passengers. Such renting of buses by the applicant squarely fell under Sr. No. 10, Heading No. 9966, sub clause (ii) as rental Service of transport vehicles, in this case with operators and therefore attracted CGST and SGST @ 9% each on remuneration received for such services rendered by the applicant."
- 2.9 As per Entry no. 3 of the Exemption Notification, "Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempted."
- 2.10 NMMT is a Special Purpose Vehicle Company incorporated under the provisions of Companies Act, 1956 whose shares are held by the Navi Mumbai Municipal Corporation ("NMMC") and further, it has been entrusted with the responsibility to provide City bus service in Navi Mumbai by the State Government of Maharashtra. Thus, NMMT qualifies as Government Entity. While NMMT qualifies



as government entity, the activity of providing passenger transportation services does not fall under any of the functions entrusted to Municipality under Article 243W of the Constitution. Thus, the services provided by Applicant are not covered by Entry no. 3 of above Exemption Notification as the services provided to NMMT are not in relation to any of the functions listed in Twelfth Schedule of the Constitution. Hence, services provided by Company would not qualify for exemption *supra*.

2.11 The services provided by the Applicant shall be covered under Entry 10(i) of the Rate Notification which reads as follows: "Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient". Under Entry 10(i) of the Rate Notification, the tax is payable at the rate of 12%. However, the supplier has an option to pay tax at the rate of 5% provided it does not avail the input tax credit of tax paid on input supplies used for providing the services. If the supplier does not exercise the option of 5%, it shall be liable to pay tax at the rate of 12% with eligibility to avail the input tax credit. The condition for service to fall under Entry 10(i) is that the cost of fuel is included in the consideration charged from the service recipient. In the present case, the buses to be given on hire to NMMT shall run on electricity with help of Lithium Ion batteries fitted in the buses. As these buses do not run on petrol / diesel, electricity acts as a fuel in the case of Electrically Operated buses. The consideration charged by the Applicant under the contract is inclusive of all the charges including the cost of lithium ion batteries, and thus it can be said that the cost of fuel is included in the consideration charged by the Applicant. Therefore, the services supplied by Applicant are eligible to GST at the rate of 12% (with the availment of input tax credit on input supplies) or 5% (without availment of credit).

2.12 However, if the authority decides that the services are not covered under Entry 10(i) of the Rate Notification, tax shall be payable at the rate of 18% under residuary Entry 10(iii) which reads as follows: "Rental services of transport vehicles with operators, other than (i) and (ii) above"

2.13 Hence, the services to be provided by the Operator shall be classified under SAC Code 9966: "Rental services of transport vehicles with operators" eligible to GST at the following rates:

- (i) 12%, if the authority decides that services are covered by Entry 10(i) of the Rate Notification;
or
- (ii) 18%, if the authority decides that services are not covered by Entry 10(iii) of the Rate Notification.

Availability of input tax credit to the Applicant

- 2.14 Under Entry 10(i), as the services provided by the Applicant are taxable, the Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used for supplying services to NMMT, if the Applicant opts to pay tax at the rate of 12% under Entry 10(i). Further, even if the tax is payable under Entry 10(iii) at the rate of 18%, the Applicant shall be eligible to avail the input tax credit as there is no condition under the said Entry which restricts the eligibility to avail the input tax credit.

APPLICANT'S SUBMISSION DATED 08.11.2021:-

SERVICE PROVIDED BY THE APPLICANT IS IN THE NATURE OF RENTING OF MOTOR VEHICLE AND IS TAXABLE AT THE RATE OF 12% (WITH AVAILMENT OF CREDIT)

- 2.15 The service provided by the Applicant is covered under "Serial No. 10(i) – renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient" under Rate Notification as amended and is thus taxable at the rate prescribed against the said Entry.
- 2.16 The issue may also arise that the service provided by Applicant is covered under "Sr. No. 22 : services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers" of Notification no. 12/2017 - CTR dated 28.06.2017 and is thereby exempt from GST.
- 2.17 The impugned agreement reveals that, there is transfer of right given to NMMT to use the buses. Effective possession (as distinguished from physical possession) and effective control is with NMMT. The buses are used by NMMT as "stage carriage" and are plying as per directions and control of NMMT. The Applicant is not free to use the said buses for any purpose other than complete dedication to NMMT. Applicant has no right and/or authority in deciding routes, schedules and the frequency of the buses and to decide the fares. Even though the drivers are appointed by the Applicant, it is NMMT which decides the routes for them. The said activity, shall amount to 'renting of motor vehicle' and qualify as a taxable activity @12% (with credit) under Notification No. 11/2017 CT(R) dated 28.06.2017 for the reasons explained above.
- 2.18 Reliance is further placed on the following judicial precedents to establish as to what constitutes 'renting' i.e., 'transfer of right to use and how the instant case is of 'renting of motor vehicle':
- (a) Hon'ble Supreme Court Judgement in case of State of AP V/s Rashtriya Ispat Nigam Limited (89 AIR 1305 SC)

- (b) *Hon'ble Andhra Pradesh High Court judgment in case of G. S. Lamba and Sons V/s State of Andhra Pradesh [2011 (1) TMI 1196]:*
- (c) *Hon'ble Orissa High Court judgment in case of Krushna Chandra Behera V/s State of Orissa (1991 83 STC 325):*
- (d) *Hon'ble Uttarakhand High Court judgment in case of CCE V/s Sachin Malhotra [2014 (10) TMI 816]:*

2.19 Based on the aforesaid submissions and judicial precedents, it may be concluded that transaction between the Applicant and NMMT is in the nature of "renting of motor vehicle" and "not of hiring". As a consequence, the same shall not be exempt in terms of Serial No. 22 mentioned above. As the transaction undertaken by the Applicant is in the nature of 'renting of motor vehicle', the same shall be taxable in terms of Sr. No. 10(i) of Notification No. 11/2017 - CTR dated 28.06.2017. The Applicant shall have an option to pay GST at the rate of 12% (with input tax credit).

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has not made any submissions in the matter.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 09.11.2021 The Authorized representative of the applicant, Shri. Pranav Pagariya, learned CA, Shri. Nishant Shah, learned advocate and Shri. Mayur Pawaskar, Manager were present. The Jurisdictional officer was absent. The Authorized Representatives made oral submission with respect to admission of their application. The Application was admitted on said date with certain directions to Applicant to produce details as to who provides the parking and the details as to who pays/bears electricity charges. Applicant was also directed to produce details i.e. agreement copies.

4.2 The matter was fixed for final hearing on 07.12.2021. The Authorized representative of the applicant, Shri Milan Soni, learned Advocate, Shri Sachin Jain, learned Advocate, Shri. Nishant Shah, learned advocate and Shri. Mayur Pawaskar, Manager were present. These Authorized Representatives, appeared made oral submission and reiterated contentions made in written submissions. The Jurisdictional Officer was absent. The jurisdictional officer was directed to file written submissions (within a weeks' time). But no written submissions are filed by the jurisdiction officer.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and submissions, both oral and written, made by the applicant.

5.2 It is noticed that a very similar issue which was involved in the case of **M/s. M P Enterprises & Associates Limited, Advance Ruling No. GST-ARA 37/2020-21/B-16, dated 14 June 2021**, was decided by this Authority. The only difference is that in the subject case, the fuel supplied by the applicant is in the form of electricity, instead of diesel which was used as fuel in the above referred case.

5.3 In the **M/s. M P Enterprises & Associates Limited** case mentioned above, it was observed that :

(i) *the applicant had an agreement with BEST for operation and maintenance of AC mini buses in Mumbai and suburban areas, the applicants owned the buses, provided drivers and also incurred expenses on fuel and maintenance of the buses. For all these services provided by the applicant, BEST was paying them service charges on kilometer basis. Further, it was BEST which was controlling the deployment of the fleets, the schedules and routes and also the applicant's drivers for operating these buses. The applicant could not run the buses on their own because the overall control of the buses was with BEST. Even the buses were required to be as per the specifications approved by BEST.*

(ii) *In the said case, there was transfer of right to use the buses given by the applicant to BEST by way of effective possession as well as effective control as was seen from the fact that : the buses were plying as per directions and control of BEST ; applicant was not free to use the said buses for any purpose other than complete dedication to BEST ; the buses were parked only in the depots owned by BEST ; applicant had no right and/or authority in deciding the routes, schedules and the frequency of the buses and to decide the fares. All the buses were painted in red colour and were embodied with "BEST" logo on all sides. The drivers were also under the administrative control of BEST, who decided the routes for them.*

(iii) *the consideration for supply of service was charged from BEST and not the passenger. Therefore, the recipient of service was BEST. Hence, the said activity, amounted to 'renting of motor vehicle' and qualified as a taxable activity under the provisions of the GST Laws and the case was clearly covered by Entry Sr. No. 10 of Notification No. 11/2017 – CT (Rate) dated 28.06.2017 in as much as there was a Rental services of transport vehicles with or without operators.*

5.4 In the subject case, the applicant has entered into Operator Agreement dated 25 February 2020

with the Navi Mumbai Transport Undertaking ("NMMT") as per which the following are also included : Applicant shall procure and supply air-conditioned electric buses to NMMT on gross contract basis to be plied on routes identified by NMMT; the ownership of the buses shall remain vested with the Applicant ; Applicant will be responsible for operating and maintaining the buses by employing drivers and other staff necessary for the operation and maintenance of buses ; Applicant shall be responsible for incurring all the expenses for operating the buses including expenses on repairs and maintenance, procurement of spare parts, charging of batteries etc. ; Applicant shall be paid an amount on the basis of kilometers logged by the Buses ; in the subject case, the fuel used to run the buses is electricity with help of Lithium Ion batteries fitted in the buses.

5.4 The consideration charged by the Applicant under the contract is inclusive of all the charges including the cost of lithium ion batteries, and thus it can be said that the cost of fuel is included in the consideration charged.

5.5 From a perusal of the subject agreement we find that, the facts in the case of M/s M.P. Enterprises & Associates Limited and the present case are identical in nature and terms of underlying contracts are also similar. The only difference is, in that case the fuel was diesel and in the present case it is the electricity. The applicant during the course of oral arguments informed that it bears the cost of electricity required for charging of buses. Further the parking charges in respect of the buses are also borne by them. Since the facts of M/s MP Enterprises & Associates Limited and the facts of the present case are same, there is no reason for us to deviate from the decision taken in the said case of M/s MP Enterprises & Associates Limited.

5.6 In the case of transportation of passengers, the recipient of service would be the passenger whereas in the case of renting of any motor vehicle, the recipient would not be the passenger. In the subject case, the consideration for supply of service is charged from NMMT and not the passenger. Therefore in the subject case it is clear that the recipient of service is NMMT. Hence, we have no hesitation in holding that the subject activity, amounts to 'renting of motor vehicle' and shall qualify as a taxable activity under the provisions of the GST Laws. Since the subject activity is taxable, the provisions of Notification No. 12/2017-CT (R) dated 28.06.2017 is not applicable in the subject case. The subject case is clearly covered by Entry Sr. No. 10 of Notification No. 11/2017 – CT (Rate) dated 28.06.2017 as amended in as much as there is a Rental services of transport vehicles with or without operators and the activities of Renting of any motor vehicle/transport vehicle which is designed to carry passengers where the cost of fuel

is included in the consideration charged from the service recipient are chargeable to either 2.5% GST or 12% GST depending on availment of Input Tax Credit. Therefore in the subject case since there is a Renting of motor vehicle/transport vehicle which is designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient i.e. NMMT, the applicant will have to pay GST @ 5% , if credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken. If credit of input tax charged on goods and services used in supplying the service, is taken then the rate of output tax would be 12%.

5.3 Thus, the service of operating AC buses by the applicant for NMMT would be subject to GST @12% under Tariff Heading 9966 i.e. 'renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient' inserted by way of Notification No.31/2017 dated 13.10.2017 (Amended Notification No.11/2017-CT(R) dated 28.06.2017) wherein the applicant is eligible to claim set off, as discussed above, on its outward supplies, as provided in the above notification.

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 1 : Whether services provided by the applicant to NMMT under the Agreement, by way of supplying, operating and maintaining air-conditioned electrically operated buses are taxable and subject to GST?

Answer: Answered in the affirmative, as discussed above.

Question 2: If the answer to (i) above is yes, what will be appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant and applicable GST rate thereon?

Answer: As discussed above, the appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant is Tariff Heading 9966. The rate of GST is 12% (with availment of ITC) or 5% (without availment of ITC), as discussed above.



Question 3: Whether Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement?

Answer: The Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement only if they pay tax @ of 12% on output service, as discussed above.




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 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.

