

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore
2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AAKCS3060PIZ1
Name and address of the applicant	M/s.Sanghi Brothers(Indore) Private Limited 6,Manorama Ganj Indore, Madhya Pradesh(452001)
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both;
Present on behalf of applicant	C.A. S.C. Bansal, Authorised Representative
Case Number	3/2019
Order dated	03/05/2019
Order Number	06/2019

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. Sanghi Brothers(Indore) Private Limited (hereinafter referred to as the Applicant) , registered under the Goods & Services Tax.



2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3.

4. BRIEF FACTS OF THE CASE:

3.1 The Applicant is registered with the Department having GSTIN 23AAKCS3060PIZ1 and is engaged in Trading activity of Motor Vehicles a complete vehicle with body duly fitted in the form of Truck, Buses and other complete vehicle by charging tax @ 28% in tax invoice.

3.2. The applicant is giving chassis of the bus/truck on FOC basis under the cover of delivery chalan to a body builders namely M/s. Arpijay Fabricators Pvt.ltd, whose works is situated at Pithampur Dist Dhar and registered vide GSTN 23AAECS9992CIZS known as job worker.

3.3 The job worker is building bodies of various vehicle over the chassis provided by the principal on job work basis. Job worker is doing job work on the goods belonging to principal and accordingly above transaction is covered under service category. Though during the course of body building some tangible and non tangible material have been used. The job worker sent back fully built vehicles to the principal and billed for the same after charging GST @ 28%.

3.4 The consideration received by the job worker is towards the building of bus bodies by using its own procured material and mounting of the body on the chassis supplied under FOC chalan by the principal.

3.5. The applicant's contention is that job worker is charging tax at higher rate i.e. 28%. Since it is a composite supply consisting of a small part of supply of goods and major part of supply of services. As per the provisions of Sec. 8(a) of the CGST Act the same should be classified as supply of services under HSN – 9988.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

4.1 “Whether building of body after utilizing and consuming owned materials and providing labour and further amounting the same on chassis of the principal would amount to supply of Services”.

4.2 “Whether it would amount to a composite supply consisting a small part of supply of goods and major part of supply of services. Supply of Services being principal supply therefore on the basis of provision of Sec. 8(a) of the CGST Act the same should be classified as supply of service under HSN. 9988”

However **during discussion the applicant reframed** the question raised as following :

Whether mounting of Bus/ Truck /Ambulance Body by the job worker on the chassis supplied by the principle for which the job worker charged fabrication charges including cost



of certain material that was consumed during the process of job work. would amount composite supply in which supply of service being principal supply therefore on the basis of provision of Sec. 8(a) of the CGST Act the same would be classified as supply of service under HSN 9988" The complete vehicle i.e the chassis and mounted body is sent back to the principle (no where the ownership is transferred to the job worker)

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the rate of tax on the nature of work undertaken by the applicant will attract 18% GST as per circular no. 52/26/2018-GST issued by CGST.

6. RECORD OF PERSONAL HEARING:

6.1 C.A. S.C. Bansal, Authorised Representative of the applicant for personal hearing the submissions already made in the application. The Applicant states that –

As per the term defined u/s 2(68) of the CGST Act and as per para 3 of the CGST Act and as per para 3 of the schedule II of the CGST Act "any treatment or process which is applied to goods of another persons is a supply of service.

As per Sec. 2(68) of the CGST Act/ SGST Act. The term job worker means" "any treatment or process under taken by a persons on goods belonging to another registered persons and the expression job worker shall be construed accordingly".

As per Sec. 2(30) "composite supply "means supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply"

As per Sec. 2(90) Principal supply "means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary".

Sec. 8(a) determined tax liability on composite supply which reads as under:-

"The Tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and,"

6.2. The Motor Vehicle is not complete without a body .A chassis is semi finished goods and any treatment done by any other party on the chassis is the activity of job work. Therefore it is supply of service and covered under HSN-9988 which attracts tax 18 %GST.

As per the provision of job work the job worker can use his own goods for providing the service of job work in addition to the goods received from principal.

In this connection it is relevant to refer explanation provided u/s 143 of CGST Act which reads as under:-

"For the purpose of job work input includes intermediate goods arising from any treatment of process carried out on the inputs by the principal or job worker"

As per the ratio of the judgement held in case of Prestige Engineering (India) ltd VS CCE on Merut (1994(73) ELT 497 (SC) addition or application of items by job worker would not detract from the nature and character of his work. Here it would be worthwhile to explain process of body building. being undertaken by the body builders.

6.3. Process of Body Building and mounting the same on chassis is as under:-



For fabrication of bus body, the builder first make the pipe structure and mount the same on the chassis. Outer panelling is done with GP sheets and interior panelling with colour coated G.P. Sheets. Flooring with chequered plywood. After primer painting the final coat of paint is applied. In this case body is not made separately but is fabricated on chassis itself. Body requirement differ from party to party.

It can not be treated as process of manufacturing merely because job worker is using its own inputs.

GST Law does not distinguish between raw materials, finished goods and semi finished goods. It talks about "input" and capital goods. Even semi finished goods or intermediates are and in turn input by the principal or job worker.

Therefore merely because job worker is using its own input it is not job work. This is not according to the provisions of GST Law.

From the above process one can reach to the conclusion that Fabrication and other work is done on chassis itself . It is not the case that any readymade body is fitted on chassis given by the owner.

The ownership of chassis always remains with the applicant company who has given chassis for building and mounting of body on job work. Because it fulfils the main important condition of the definition of job work i.e. process undertaken on goods belonging to another registered persons . The whole process of body building and mounting is performed on the goods (Chassis) belonging to the applicant therefore it is purely job work. Once it is established that it is a job work then it is supply of service. Even if it is composite supply of goods and services. The predominant intention of the principal is to get services . Utilizing and consuming tangible and non tangible goods is incidental to main/principal supply and therefore as per the provision of Sec. 8(a) in case of composite supply tax is being levied at the rate applicable to principal supply . In this case the principal supply is supply of service. Thus, it should be classified as services and tax is @ 18% under CGST Act.

6.4. Here it is also important to note that principal is charging @ 28%GST under HSN Code 8707 on supply of a complete vehicle but body building for him is a receipt of service and duly covered under HSN Code 9988 where the rate of tax is applicable @ 18% under GST Law.

The circular No 34/8/2018/GST dated 3rd March 2018 issued by the Govt' of India Ministry of Finance has clarified the matter as under:-

S.No.	Issue	Clarification
01	Whether activity of Bus Body building is a supply of goods or Services	In the case of bus body building there is a supply of goods & Service Thus classification of this complete Supply as goods or service would depend on which is the principal supply which may be determined on the basis of facts & circumstances of each case.

6.5. Reliance is placed on the following judgements:-



1). **Kailash Engineering Co. V/S State of Gujrat (1964) 15 STC 574** where their Lordship of Supreme Court has held that the contract for building erecting and furnishing of Coach bodies on under frames supplied by the railway was not contract for sale of goods.

2). M/s. Mahindra Coach factory Pvt. Ltd VS CTO Special Circle 3 Jaipur it was held by the Hon'ble Rajasthan High Court that contract of Bus Building Fabrication is not a sale but works contract.

3). The Hon'ble Goa Authority for Advance Ruling in the case of Automobile Corporation of Goa Ltd Sattari (2018) 33 GSTJ 581 has held that the activity of building and mounting of the body on the chassis provided by the principal under FOC chalan will result in supply of services under HSN 9988 and hence, should be taxed @ 18% GST.

4). There is a judgement of Authority for Advance Ruling- Madhya Pradesh in the case of Arpijay Fabricators pvt. Ltd 2018 33 GSTJ 211 where it was held that if the predominant element to be the service part, then the principal supply would be classified under heading No 9988. In the judgement the Hon'ble Authority in last

para has mentioned that

“due to incomplete information provided by the applicant, The authority find itself constrained to provide any definitive ruling on this aspect. In this case the applicant did not provide desired information”.

The judgement based on incomplete information is not binding to all cases . On the basis of informations and submission the Hon:ble Authority may differ from the earlier decision.

6.6. The Applicant summarized the argument as follows –

6.6.1. The appellant is engaged in Trading of Motor Vehicle i.e. chassis and complete Motor Bus, Truck, Dumper. It is providing chassis to body builders who are building body and mounting the same on the chassis belonging to principal. During the course of body building some Tengible and non tengible material have been used by the job worker. The job worker sent back complete vehicle (i.e. chassis + Motor body) to the principal and billed for the body building charges.

6.6.2. Any treatment or process which is applied to goods of another person is job work and supply of service.

6.6.3. As per the process of body building, some goods are used by job worker Therefore it is composite supply consisting of small part of supply of goods and major part of supply of services. As per the provision of Sec. 8(a) of CGST Act the same should be classified as supply of services under HSN-9988 which attracts Tax @ 18% GST.

6.6.4. Your honour's attention is drawn on process of body building and mounting the same on chassis. Where the builder first make the pipe structure and mount the same on chassis. Outer paneling is done with G.P. Sheets and interior panelling with colour coated GP Sheets. Flooring with chequered Plywood, after primer painting the final coat of paint is applied. In this process body is not made separately but is fabricated on chassis itself as per the different requirement such as Bus/Truck Dumper.

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6.6.5 The ownership of chassis always remains with the applicant company who has given chassis for building and mounting of body on job work. Therefore it is purely job work. Because it fulfils the main important condition of the definition of job work i.e. process undertaken on goods belonging to another registered person. Thus the predominant intention of the principal is to get services and utilisation and consumption of Tangible and non Tangible goods is incidental to main supply and therefore as per the provision of sec. 8(a) it is composite supply and tax is being levied at the rate applicable to principal supply.

7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

7.2 First of all we have to look upon the nature of work to be done by the job work. As per the submission the applicant, the applicant intends to execute a contract of fabrication of body to be mounted on the chassis by a job worker. As per the term of the contract the chassis will be delivered by the applicant(Principal) for the purpose of carrying out the body building on the chassis on delivery challan to the job worker. The job worker shall procure various goods such as metal sheets, plywood, seats, glasses, aluminium sections etc. as inputs for fabricating the bus body besides fabrication services. Once the body is built and mounted on the chassis by the job worker, the vehicle will be sent back to the Principal/the Applicant of the chassis after raising tax invoice towards body building charges on which GST will be charged separately. At no stage the ownership of the chassis will be transferred by the Principal to the job worker and body built thereon will be nature of job work.

7.3 The job worker will claim the credit of GST paid on the material used as input against Output liability of GST on body building activity carried out by it. The consideration received by the job worker will be towards the manufacturing of the body on the chassis supplied by the Applicant(Principal).

7.4 In this connection first of all we have to see whether the nature of the work falls under the purview of "Job work" or not . In this connection, it is relevant to refer explanation provided under section 143 of GST Act, 2017 which reads as under "For Purpose of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or job worker ".

7.5 In the instant case the job worker shall procure various goods such as metal sheets, plywood, seats, glasses, aluminium sections etc. as inputs for fabricating the bus body besides fabrication services. Once the body is built and mounted on the chassis by the job worker, the vehicle will be sent back to the Applicant/Principal after raising tax invoice towards body building charges on which GST will be charged separately. At no stage the ownership of the chassis will be transferred by the Applicant to the job worker. The job worker will claim the credit of GST paid on the material used as input against output liability of GST on body building activity carried out by it. The consideration received by the job worker will be towards the manufacturing of the bus body on the chassis supplied by the Principal.



7.6 It has been held in the case of Prestige Engineering(India) Ltd. Vs. CCE on Merut [1994 (73) ELT 497(SC)], addition or application of items by job worker would not detract from the nature and character of his work.

7.7 GST Law does not distinguish between raw material, finished goods and semi-finished goods. It talks about input and Capital goods. Even Semi-finished goods or intermediate are goods and in turn 'Input' by the Principal or by the worker.

7.8 So the argument of the applicant that the nature of the work stated in the application should be falls under "job work" is tenable under the provision of the Law.

7.9 Now we come to the reframed question raised by the Applicant as Whether mounting of Bus/ Truck /Ambulance Body by the job worker on the chassis supplied by the principle for which the job worker charged fabrication charges including cost of certain material that was consumed during the process of job work. would amount composite supply in which supply of service being principal supply therefore on the basis of provision of Sec. 8(a) of the CGST Act the same would be classified as supply of service under HSN 9988" The complete vehicle i.e the chassis and mounted body is sent back to the principle (no where the ownership is transferred to the job worker).

7.10 We Find that the activity and question raised before us has been suitably clarified and dealt with Circular no. 52/26/2018-GST issued by Government of India, Ministry of Finance, Department of Revenue dated 9th August,2018.

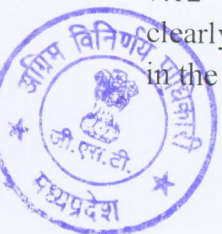
7.11 The following Paras of the above mentioned circular the issue has been dealt with which are as follow –

1. Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

2. Fabrication of body may involve the following two situations: a) A vehicle body builder builds a vehicle, working on the chassis owned by him and supplies the built-up vehicle to the customer, and charges the customer for the value of the bus. b) A vehicle body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

3. In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of vehicle, and accordingly supply would attract the GST applicable to the vehicle @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

7.12 The submission by the applicant with the application and during time of argument clearly shows that the nature of the work for which ruling on the rate of Tax has been sought in the question clearly falls under Para 12.2(b) of the above mentioned circular fabrication of



body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

7.13 It is pertinent here to mention that the ruling quoted above pronounced by this Authority in the case of M/s. Arpijay Fabricators Pvt. Ltd. vide order no. 04/2018 dated 30.06.2018 based on the then existing provisions and issued at that time, the circulars issued and the arguments and materials supplied by the applicant in that case.

8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

8.1 In respect of the question raised by the applicant we hold that on **mounting of Bus/ Truck /Ambulance** body on the chassis to be supplied by the Principal on delivery challan or any other owner of the chassis on which Bus/ Truck /Ambulance body will be fabricated by collecting job work charges including inputs required for such fabrication work and in no case the ownership of the chassis will be transferred by Applicant to the job worker will be taxable under SAC 998881 – **“Motor vehicle and trailer manufacturing services”** and under entry no. 26(ii) as **“Manufacturing services on physical inputs (goods) owned by other”** it is taxable @18%(9% under CGST and 9% under SGST Act).

8.2. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

CA
RAJIV AGRAWAL
(MEMBER)

Copy to:- *NO.03/2019/A.A.R./R-28/15*

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

CA
MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 03/05/2019

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