

RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX



KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)

ADVANCE RULING NO. RAJ/AAR/2022-23/08

Vikas Kumar Jeph Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Sunil Giri, Near Swami Dharmshala, ward 12, Suratgarh, 335804- Rajasthan.
GSTIN of the applicant		08CRBPG5309N1ZM)
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(c) Determination of time and value of supply of goods or service or both.
Date of Personal Hearing	:	11.05.2022 & 14.06.2022
Present for the applicant	:	Advocate, Vivek Sharma & Advocate, Anurag Kalawatiya, (Authorized Representatives)
Date of Ruling	:	16.06.2022

Note: Under Section 100 of the CGST/RGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/RGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s Sunil Giri, Near Swami Dharmshala, ward 12, Suratgarh, 335804- Rajasthan. - (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (c) given as under:

(c) Determination of time and value of supply of goods or service or both.

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1.0 The Applicant i.e. Sunil Giri, (the Proprietor of M/s. Giri Transport Company) is a Goods Transport Agency ('GTA' for short) having its



registered place of business at Swami Dharmashala, 12 Unnamed Road, Suratgarh, having GST Registration number 08CRBPG5309N1ZM.

- The Applicant is about to enter into contract with its customer for 1.1 providing service of transportation of goods by road.
- In terms of the contract to be executed with the customer, the diesel to be 1.2 consumed in providing the service of transportation of the goods is within the scope of the customer and/or is provided on free of cost basis. The said diesel required for the trip, will be filled in the truck deployed by the Applicant for the transportation, the parties have clear understanding that the said diesel shall be used/consumed exclusively for the transportation of goods belonging to the customer and that the property in the diesel will not pass to the Applicant. The freight for the transportation is fixed based on the scope of transportation service, which excludes diesel. In the light of the above arrangement, while undertaking the activity of transportation of the goods, the truck placed by applicant would be filled up with the diesel required to be consumed for the said transportation trip. The said agreement is always for full truck load and for transportation to specific destinations only. The Applicant would be neither required to nor would be liable to pay for the diesel that would be filled in the trucks by the said customer.
- As far as the Applicant is concerned, the Applicant will be required to send 1.3 the trucks to the customer's factory. The trucks will report to the factory and after loading of goods, diesel required, calculated on the basis of load and distance, for the transportation of the said consignment to the destination, will be filled in the fuel tank of the truck.
- The truck is then ready to commence its journey and a consignment note is 1.4 to be issued by the Applicant. The consignment note shall contain details of the consignor and the consignee, the nature and quantity of the goods being carried and the freight chargeable for the transportation. On completion of the transport service (successful delivery of goods to the service recipient), the Applicant will raise invoice, charging freight, as indicated in the consignment note, for the GTA service. The freight chargeable will not include the value of diesel since it is in the scope of the customer and/or is provided on free of cost basis. The invoice will contain details of consignment notes that are issued as an acceptance of the contractual obligation for undertaking transportation at the agreed freight rate.
- The Applicant will account the freight charged from the customer as 1.5 business revenue and diesel filled in the trucks by the customer will not be accounted in the books of the Applicant, this is for the simple reason that according to the terms of the agreement the Applicant is not responsible for the diesel and also the Applicant will not be aware of the quantity and the value of diesel (rate at which it is procured by the customer) since it is filled directly in the fuel tank of the truck. The Applicant would be charging GST (under forward charge) on the freight charged. Considering that diesel is in the scope of the customer, nothing is chargeable by the a

Applicant from the customer for such diesel and no consideration for the diesel is paid or is payable by the Applicant to the customer and/or no adjustment from any amount payable to the Applicant is made / to be made by the customer. The payment against the service invoices are settled through bank transfer by the customer.

APPLICANT'S INTERPRETATION OF LAW

1.0 In the above backdrop, it is the bonafide understanding of the Applicant that value of diesel, which is in the scope of the customer, and as filled in the vehicle by them is not required to be included in the value of freight charged by Applicant for the said transportation. The interpretation of law and/or of the facts in this context is explained hereinafter.

2.0 Diesel is to be filled in the trucks is in contractual scope of the customer:

2.1 In view of the above facts and the terms of the agreement diesel is in the scope of the customer and would be filled in the truck without any charge or cost. As explained in the facts enumerated hereinbefore, the Applicant does not have any obligation to provide diesel and is also not liable to make any payment for diesel provided to the trucks by the customer. Hence, considering the apparent tenor of the agreement, there is no requirement to include the value of the diesel in the value of freight charged by the Applicant for the transportation service.

3.0 The legal provisions for valuation and clarifications issued under the **GST law:**

- 3.1 Sec. 15 of the CGST Act, 2017, provides that the value of supply of goods or services shall be the transaction value, which is the price actually paid or payable. Sub-section (2) of the said section provides for a list of inclusions in the value of supply, which interalia includes any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.
- 3.2 Sec. 15(2) does not require inclusion, in the taxable value of the supply, of the value of goods provided by the recipient without cost or charge and which is not in the scope of the service provider or in respect of which the service provider is not liable to make payment. In the instant case also, the Applicant is not liable to pay any amount for the diesel filled in the truck free of charge or cost by the customer for transporting their goods and hence, the value of diesel is not includible in the value of service provided by the Applicant under Sec. 15(2) of the CGST Act, 2017.
- 3.3 The position as explained above is in line with the letter and spirit of the GST law as finally introduced w.e.f. 01-07-2017. In this regard, it is respectfully pointed out that prior to its introduction, a Model GST law was circulated in public inviting comments/suggestions from stake holders. In the Model GST Law, issued by the empowered committee of State Finance 0

Ministers in June 2016, there was a proposal to include the value of any goods and/or services provided by the recipient on free of cost basis. In view thereof, specific provision under Sec. 15 (Model Law) was also inserted. However, when GST was finally enacted and made applicable with effect from 01-07-2017, the requirement of inclusion of value of free issue material was deleted. Relevant extract of the Model GST law is reproduced here-in-below:

"Sec 15: Value of taxable supply

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(2) The transaction value under sub-section(1) shall include:

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(b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;

Considering that the above provision was deleted and did not find place in the enacted GST Act, 2017, it is clear that the legislature, in its wisdom, does not seek to levy GST on such free of cost goods/ services and hence the value of diesel provided free of cost to the trucks of the Applicant is not includible in the value of service provided by him.

Vide additional submission dated 14.06.2022, the Applicant produced following written submissions in support of their application:

That the Applicant who is a GTA service provider is about to enter into an 1. transport service recipient for with agreement/contract goods/material to specified locations/depots for captive consumption. The service recipient registered under GST laws is engaged in manufacturing activities and supply of goods exigible to GST. The service recipient avails inputs tax credit of inward supply of goods and services and regularly deposits GST payable. As per the terms of the draft agreement, the Applicant is required to transport the goods belonging to the service recipient by deploying trucks/ trailers. The scope of service of the Applicant is to provide the truck/trailer along with the driver and report at the unit(s) of the service recipient. The service recipient loads the goods on the truck deployed by the Applicant which are to be delivered at the specified destination(s) within reasonable period of time. Upon loading of the goods on the truck deployed, the Applicant will issue consignment note containing the details of goods being transported, including the quantity thereof as well the freight consideration receivable by the Applicant for providing the services. Upon successful delivery of the goods at the specified destination, the Applicant would be required to obtain proof of delivery by getting the consignment note acknowledged for delivery of the goods. Thereafter the Applicant can raise his bill/invoice charging the freight consideration as agreed. Payment of the freight consideration would then be made by the service recipient through bank transfer (refer clauses 3 and 4 of the draft agreement).

Apart from above, the terms of draft agreement provides that the fuel required for carrying out the transport of goods is in the scope of the service recipient and not in the scope of work of the Applicant. The diesel required for transporting the goods from a specified location to another specified location shall be filled by the service recipient at its own location from its captive diesel pump and the Applicant is only required to make sure that the concerned trucks/trailers have that much quantity of diesel in their tanks that they reach the location of service recipient. The Service Recipient shall devise a mechanism to calculate the consumption of diesel for transportation between two specified locations and shall fill that much quantity in the trucks/trailers as required.

The terms of the draft agreement clearly provide that the Applicant is only responsible for the safe delivery of the consignment. Further, any accident or damage arising during the course of providing the transport service is the responsibility of the Applicant. The Applicant is also responsible to the drivers.

The fuel will be in the scope of the service recipient and the Applicant is not concerned, in any manner, with reference to the free of cost fuel.

As succinctly mentioned in the draft agreement, the Applicant will be issuing consignment note for each vehicle load/consignment. The consignment note, inter-alia, will bear information such as the consigner, consignee, name of goods (raw material) being transported, quantity of material loaded for transportation and freight consideration.

On completion of the transport service i.e. the successful delivery of raw materials to the service recipient, the applicant will raise invoice, charging freight for the GTA service provided. The invoice will carry the details of consignment notes for the GTA service provided.

The Applicant will be accounting the freight charged from the service recipient as business revenue. Further the applicant will be charging GST (under forward charge mechanism) on the freight so charged. It is further to submit that the applicant will not be doing any accounting for the diesel filled in the truck by the service recipient as the same has not been provided to the applicant and also not being in the scope of the Applicant.

Submissions of the Applicant on merits

2. That firstly, as per circular no. 47/21/2018-GST dated 08.06.2018, CBIC has clarified that GST in applicable on the value of supply charged by the service provider as per contract and not on the material which is not in scope of supplier (service provider). In the instant case, as per the draft agreement between the applicant (GTC) and the service recipient (ABC), the applicant would be charging freight as consideration for the service provided by him to the recipient of service and the applicant would not be charging any consideration for the diesel filled by the service recipient free of cost in the engaged trucks/trailers. Rather to the contrary, as per the draft agreement (Clauses 4.2, 4.4, 4.5 and 4.6), the fuel is the sole responsibility of service

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recipient and shall be in its scope and that it will ensure to fill the trucks/trailers with adequate fuel to ensure that its goods stand transported safely. For transportation of the goods, the service provider (GTC) is not responsible for the fuel in any manner. Accordingly, it is humbly submitted that in such circumstances, GST shall be leviable only on the freight component of the service provided and not on the value which is inclusive of the cost of diesel filled by the service recipient. Copy of above referred Circular is annexed at page 28 of the compilation already submitted earlier.

3. That secondly, it is submitted that the in the model draft GST law, provision for levying GST on Free of Cost goods supplied by service recipient as per the terms of contract was contained (in Section 15(2)(b) of the Model GST Act) whereas in the finally enacted and implemented GST Act, 2017 (which was implemented w.e.f. 01.07.2017), this provision was removed. The draft GST law stated that –

15(2)(b) - "the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable"

However, in enacted GST law, this provision was deleted. This also makes it clear that the Section 15 as contained in the CGST Act 2017 does not include the value of FOC goods supplied by service recipient as per terms of contract and also makes it clear that the law makers have purposely deleted the said provision while enacting the GST Act, 2017.

This view also gets affirmed from the fact that both the draft GST law and enacted GST law in section 15 contain the provision "any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both."

- 4. That furthermore, the provision relating to scope of supply is contained in Section 7 of CGST Act read with schedules thereto. FOC supply made without consideration has been included in the scope of supply vide Section 7(1)(c) read with the Schedule-I to the CGST Act. Perusal of the First Schedule makes it clear that FOC supply made between unrelated parties under the terms of contract are not taxable supplies. Further, in the present case, if the provision of section 15(2)(b) is seen which provides that "any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply" then it does not include FOC diesel for the simple reason that the liability towards the diesel required for transporting the goods is of service recipient as clearly stated in clauses 4.2. 4.4, 4.5 and 4.6 of the agreement.
- 5. That furthermore, if the history of taxability of GTA services is to be looked into, then it is worth noting that the GTA service was taxed for the first time in the year 2005. Post introduction of negative list of services in the year 2012, GTA service remained unchanged and in CGST Act, 2017, its

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taxability remains the same with a facility that option is available to GTA to deposit tax under forward charge otherwise this has to be continued under reverse charge mechanism. The inadmissibility of input credit of Excise Duty or GST deposited on diesel also remains the same. Thus the provisions of Finance Act, 1994 and GST Act are symmetrical for the present issue under consideration. That to drive home the above submission, kind attention is drawn to section 15(1) of CGST Act wherein value of supply is defined as the transaction value which is the price actually paid or payable for the said supply; comparatively, the section 4(3)(d) of the Central Excise Act defined transaction value as "the price actually paid or payable for the goods.....and includes in addition the amount charged as price, any amount that the buyer is liable to pay". In addition to above, explanation to Section 67 which defines 'consideration' as including "any amount payable for the taxable services provided or to be provided; any reimbursable expenditure or cost incurred by the the service provider " further the term 'gross amount charged' as described in section 67 includes "payment by cheque...deduction from account and any form of payment....and book adjustment.....in the books of account of a person liable to pay service tax". The Applicant submits that these provisions are pari-materia as both these sections deal with valuation of service. Further, the Applicant humbly submits that the decision of Hon'ble Supreme Court in case of Bhayana Builders wherein it has been held by Hon'ble Apex Court that FOC goods provided by recipient of service would not be included in the value of service on inter-alia the reason that such goods are not consideration as nothing is charged/chargeable nor is there any liability created on the service provider towards such FOC goods. Apropos to same, in Section 15(2)(b) of the CGST Act also the value of FOC goods provided by recipient of supply shall not be includible if the service provider (Supplier) is not "liable" for the same.

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- 6. That furthermore, the present Applicant relies on various judgments (copies supplied separately) which though pertains to the service tax era but are on the same issue in relation to FOC diesel and other items by service recipient for GTA service and hence will squarely apply to the issue under consideration. In these decisions, the Courts adjudged the argument that diesel is an essential input with finding that FOC diesel cannot be added in the value of service.
 - Commissioner of Central Excise vs. Bhayana Builders (P) Ltd., 2018
 (2) TMI 1325 (SC).
 - Jain Carrying Corp. vs. CCE, Jaipur (2019) (3) TMI 864
 - RK Transport Co. vs. CCE, Raipur, 2020 (11) TMI 034
 - Heligo Charters vs. CCE, Mumbai, 2020 (4) TMI 182
 - Ganpati Asso. Vs. CCE, Jaipur, 2019 (5) TMI 1233
 - Karamjeet Singh & Co. Ltd. vs. CCE & ST (2013 (12) TMI 434)
 - Shree Logistics Pvt. Ltd. VS CCE Udaipur [2017 (11) TMI 1464]
 - Ganpati Associates Vs CCE, Jaipur [2019 (5) TMI 1233]
 - Munshi Lal Durga Prasad Vs CCE Jaipur [2019 (5) TMI 1233]
 - TCL MMPL Consortium Vs CCE, Jodhpur [2012 (2) TMI 49]
 - Vanatage International Management Co. Vs Commissioner, CGST [2021 124 TAXMANN.COM 355]



That furthermore, it is humbly submitted that in the case at hand, the transaction is revenue neutral as the service recipient would be eligible to claim input tax credit of GST charged on the GTA service provided by the Applicant. When input tax credit of GTA service is admissible to the service recipient, non-charging of GST will not lessen the revenue to the exchequer on end to end basis. However, looking to the position of section 15(2) (b), it will be erroneous and contrary to law [Section 15(2) (b)] for the applicant to charge GST just because recipient is entitled to input tax credit.

- 7. That even if it is assumed for the sake of argument that free of cost diesel provided by the service recipient is to be includable in value of GTA service provided by the Applicant then computation cost of value of diesel cannot be determined by the Applicant. This is for the reason that diesel stands procured by the service recipient for its own purposes. The Applicant is not privy to cost of diesel. Therefore, onus even if put on the Applicant to include the cost of diesel would be an impossibility of compliance. Hence, the same would be impermissible in law.
- 8. That during the course of hearing, Advance Ruling in the matter of Shri Navodit Agarwal 2019 (4) TMI 1402 was referred, however as far as this ruling is concerned, it is inapplicable to the issue at hand. The fact situation of the two matters are distinct. In the case of Shri Navodit Agarwal, the contention of the applicant stands noted and in para 3 IV of the decision as:

IV. The applicant have expressed the view that they need to charge GST to Shree Raipur Cement, C.G on total amount including diesel cost and Shri Raipur cement will raise separate invoice for diesel upon them.

Thus, from above it is clear that in the case of Shri Navodit Agarwal, there were two supplies. First, supply of diesel by Shree Raipur Cement to Shri Navodit Agarwal for which an invoice was issued by Shree Raipur Cement. Second, service rendered by Shri Navodit Agarwal of transportation including diesel which now belonged to Shri Navodit Agarwal itself. In such circumstances, the decision appears to have been given. In any case, the Advance Ruling Authority was not apprised on Circular no. 47/27/2018 – GST dated 08.06.2018 and decisions passed in Lear Automotive (supra) and Nash Industries (supra) wherein section 15(2)(b) of CGST Act stands interpreted. Further, interpretation of section 15(2)(b) has not been dealt in this matter. For, all of the above, advance ruling given in the matter of Shri Navodit Agarwal is inapplicable for the present purposes.

9. That lastly, at the cost of repetition, it is submitted that the FOC diesel is not 'consideration' for the Applicant as the diesel is not supplied to him but the diesel would be filled in the fuel tank of the trucks/trailers that would be engaged by the service recipient, at their own location and that too after loading the goods and it can be used only for transporting the goods of service recipient. In this regard, the Board Circular 47/27/2018 though in a different context but relevant to the present issue, has clarified that the

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Moulds and dies provided on FOC basis by the recipient of supply is not consideration. The Board circular has been relied upon by AAR Maharashtra in its advance ruling GST ARA-19/2018-19/B-80 dated 31.07.2018 given in case of *M/s. Lear Automotive India Private Limited* (copy supplied separately).

In this order, similar issue of FOC goods supplied by recipient of supply to the supplier as per the terms of the contract was decided. While deciding the issue, AAR Maharashtra had taken on record Australian GST ruling 2001/6 for reasons that the definition of consideration given in section 2(31) of CGST Act, 2017 is identical in Australian GST law and AAR, Maharashtra after examining the issue has held that FOC goods supplied by recipient of supply are not includible in the value of supply.

Similar decision has been given by Appellate Authority for Advance Ruling, Karnataka in the case of *M/s. Nash Industries (I) Pvt. Ltd. in KAR/AAAR/07/2018-19 decided on 01.03.2019*. (copy supplied separately in the compilation already submitted).

10. Therefore, in light of the above mentioned submissions, it is respectfully prayed that the present Application seeking Advance Ruling may be decided by holding that the value of diesel which is in the scope of service recipient would not be included in taxable value of supply of the service provider and accordingly, the value of diesel, provided by the customer (service recipient) to the trucks, is not to be added to the freight charged by the Applicant for the purposes of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') & the Rajasthan Goods and Services Tax Act ('RGST Act, 2017').

11. The

draft agreement

is

reproduced

as under:

TRANSPORT SERVICE AGREEMENT

This Agreement made this

day of

2022

BY & BETWEEN

Name and address of company [Hereinafter referred to as "ABC" which shall wherever the context so admits include its assigns and successor in title] of the one part;

AND

Sunil Giri, proprietor of M/s. Giri Transport Co., Sole Proprietorship Concern [hereinafter referred to as "GTC" which name shall wherever the context so admits include its assigns and successor in title] of the other part;

ABC and GTC are individually referred to as "Party" and collectively as "Parties"

RECITALS

Whereas GTC inter alia is engaged in transportation services and is a registered entity under the GST laws having registration number 08CRBPG5309N1ZM Whereas ABC registered under GST laws having GST registration no...... is engaged in manufacturing activity and supply of taxable goods. That ABC is regularly availing input tax credit on inward supplies of goods and services and depositing GST payable. That ABC requires services of GTC for transportation of its goods. GTC has sought to undertake transportation services for ABC on the terms and conditions herein contained.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. TRANSPORTATION ACTIVITIES

- 1.1 GTC has capacity of arranging trucks/trailers listed in Annexure-1 hereto. GTC will undertake transportation activities for ABC and the required trucks/trailers along with the driver and assistant will report at the day/time and place directed by ABC. The trucks/trailers so placed by GTC along with driver and assistance will be required to undertake transportation of the goods in accordance with the instructions of ABC.
- 1.2 GTC is not responsible for loading/unloading of the goods. GTC is to ensure that trucks/trailers report at the designated place of loading/unloading of the goods as per the directions and time allotted by ABC.
- The activity of safe transportation is critical, and it is incumbent on GTC to ensure that goods are safely transported from point of origin to point of destination. For this, GTC ensures that it has experienced drivers and assistants who have the capacity to undertake transportation of industrial goods on trucks/trailers listed in Annexure-1 and understand transportation of industrial goods on trucks/trailers listed in Annexure-1 and understand transportation of industrial goods.

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adequate safeguard measures on bad roads and all other measures warranted for sale transportation of goods.

- 1.4 GTC is strictly instructed that under no circumstances would any quantity of goods carried in the truck/trailer be disposed of, other than by way of delivery of the goods to the destination against receipt. For any reason, if the consignment is not accepted at the destination point, GTC will take necessary directions from ABC on the next steps. Under no circumstance, the consignment it to be brought back without prior written approval of ABC.
- 1.5 Responsibility for any deviation and consequent losses during transportation vests solely on GTC.

2. CONSIDERATION

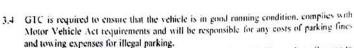
- 2.1 Prevalent freight rate for the specified destination will be notified by ABC from time to time and GTC will be under the obligation to ensure that only such freight, as accepted is charged.
- 2.2 GTC will submit its bills in duplicate along with receipted LR / GR. Photocopy or duplicate copy of LR is not acceptable by ABC along with the bill.
- 2.3 The value of fuel, which is in the scope of ABC, shall neither be adjusted with nor by any means affect the payment to be made by ABC against the bills issued by GTC.
- 2.4 All payment will be subject to deduction of income tax (TDS/TCS), wherever applicable any other taxes/levies which may be levied by Government from time to time.

3 RESPONSIBILITIES OF GTC

- 3.1 GTC to ensure that the remuneration, leave, medical (including insurance coverage for personal injury and death) and other benefits of its drivers and assistance are paid in accordance with applicable law(s).GTC is to ensure that the driver and the assistant report with the truck/trailer at the stipulated time/place in proper dress. The driver brings and carries along with him all documents/records in accordance with Motor Vehicles law(s). GST laws and any other law(s) applicable during transportation.
- 3.2 To pay the wages of driver and assistant of the trucks/trailers in accordance with the Minimum Wages Act. To ensure that the driver and the assistance are adequately rested before they report for undertaking transportation of ABC's goods.
- 3.3 GTC's driver is to lodge First Information Report (FIR) to the nearest Police Station and inform the Parties within 24 (twenty four) hours of any damage to or loss of the truck/trailer and the goods contained the information. To issue Certificate of Fact (CoF) to ABC.

 GTC will be GENTEAMS FORT GOODS, penalties, damages associated with such an GTC will be GENTEAMS FORT GOODS.

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GTC to engage trucks trailers as per instructions given by ABC. The trucks trailers are to effectively report with empty fuel tank. Fuel to the extent that the truck/trailer reaches the loading point safely is only to be ensured by GTC.

- 3.6 GTC would arrange to get all the trucks/trailers weighed first and then place the trucks trailers for loading. Before loading the material, dispatch instruction should be handed over along with tare weight slip, thereafter only, truck will be loaded. After loading the truck, the truck should be again weighed, and net weight of the material would be arrived at for preparation of Tax Invoice.
- 3.7 GTC will ensure to obtain acknowledgement at the point of destination. At the destination place, goods carrying truck/trailer will be gross weighted and after unloading goods truck/trailer will be tare weighted. Net Quantity would be receipted by ABC. The said results obtained at the destination would be final and no dispute in respect thereof would be entertained by ABC.

RESPONSIBILITIES OF ABC

- 4.1 ABC to ensure that goods are available for loading at the stipulated time and place earmarked to GTC for bringing the trucks/trailers. Further, unloading of the goods takes place at the stipulated time and place instructed by ABC to GTC.
- 4.2 Fuel is the sole responsibility of ABC. ABC ensures that it will fill the truck/trailer with adequate fuel to ensure that its goods stand transported safely. For transportation of the goods, GTC is not responsible for the fuel in any manner.
- 4.3 ABC will provide necessary documents to the driver which are required to be carried during transportation under GST laws.
- 4.4 Fuel (diesel/any other fuel) used to propel the truck/trailer is not in the scope of work of GTC. It is agreed between the Parties that fuel which will be consumed during transportation, is in the scope of ABC and would be filled in the truck/trailer by ABC at the point of loading of the goods.
- 4.5 Such fuel shall be filled in the truck/trailer that is engaged for the concerned trip at the point of origin. The freight declared and agreed will not account for any cost/charges for fuel and GTC would not have any liability to pay for fuel for the said trip to be made by ABC. It is expressly clarified that the value of fuel which is in the scope of ABC shall by no means be interpreted as additional consideration payable for the transportation service provided by GTC or having been provided to the vehicle in lieu of freight. The ownership of the fuel would at no point be transferred to GTC or to the truck/trailer engaged. The track/trailer of the fuel only for the specific transportation

and would not be eligible to dispose of the same in any other manner. If as an exception, fuel is given at the destination, all the conditions specified herein would be applicable as if fuel has been given at the source.

4.6 It is agreed between the Parties that GTC has no role whatsoever in the fuel filled in the truck/trailer by ABC. ABC is the sole authority to determine consumption of fuel by a specific truck/trailer between identified points (i.e. point of origin and point of destination). ABC ensures that it has sufficient experience and knowledge of devising the correct quantity of fuel required in a specific truck/trailer between identified points (i.e. point of origin and point of destination). Any deviation from the same or shortage of fuel during transportation will not be attributable to GTC, in any manner.

5.TERMINATION OF THE AGREEMENT

5.1 ABC shall have the right to terminate this Agreement, upon it giving GTC 3 (three) months' notice in writing.

6. INDEMNITY

- 6.1GTC hereby undertakes to keep and hold ABC indemnified and harmless against all costs. expenses, claims, liabilities and proceedings which may be caused to or suffered by ABC or made or taken against ABC, which are directly or indirectly arising out of breach of this Agreement by GTC or by any act or omission of the persons engaged by GTC for performing the Services or otherwise employed or engaged by GTC.
- 6.2 Without prejudice to the ABC's all other rights, ABC will be entitled to deduct from any contract, sum or any other dues payable to GTC, the amount payable by ABC as consequence of any claims, demands, costs, charges and expenses made by any third party.
- 6.3 Under no circumstances shall ABC be liable to GTC for any indirect, special, incidental, consequential or exemplary damages or loss of profits of any kind or nature, regardless of whether such loss was reasonably foreseeable arises in tort (including negligence) or whether it was actually told of the possibility of such loss.

7. NOTICES

7.1 Any notice to the Parties shall be sufficiently served if sent by email to _____ or through registered post to the first address specified above or directly served on him or on any known agent authorized by him and notified to ABC as authorized to receive notices on his behalf.

8. FORCE MAJEURE

8.1 Neither party to this Agreement shall be liable for failure to perform any of its obligations hereunder if prevented from doing so by reason of force majeure, including [but not limited tol.] (a) sporte CO or undeclared). riot, political insurrection, rebellion, restlictions, pandemic; (c) tempest, acts of God, or

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other trouble which interfere with the manufacture, sale or transportation of the goods covered hereby or with the supply of raw materials necessary for their production: (d) fire, flood, explosion, earthquake, tornadoes or other natural events.

9. ENTIRE AGREEMENT

- 9.1 This Agreement together with the schedules and annexes hereto constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings and/or representations between the Parties.
- 9.2 This agreement, unless otherwise terminated, is valid for a period of 1 (one) year from the date of signatures of the Parties.

10. WAIVER OF REMEDIES

10.1 No forbearance, delay of indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of either Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for the Party is exclusive of any other, power or remedy available to the Party and each such right, power or remedy shall be cumulative.

11. ASSIGNMENT & CHANGE IN OWNERSHIP/ MANAGEMENT

- 11.1 GTC shall not assign or transfer its obligations and or rights under this Agreement to any third party, whether an associated entity or not, whether in whole or in part without the prior written consent of ABC.
- 11.2 GTC shall immediately notify ABC of any change of ownership or management of its business.

12. HEADINGS

12.1 The headings to the clauses of this Agreement are for the ease of reference only and shall not affect the interpretation or construction of the Agreement.

13. GOVERNING LAW

13.1 This Agreement shall in all respects be governed and construed in accordance with the Laws of Land in India

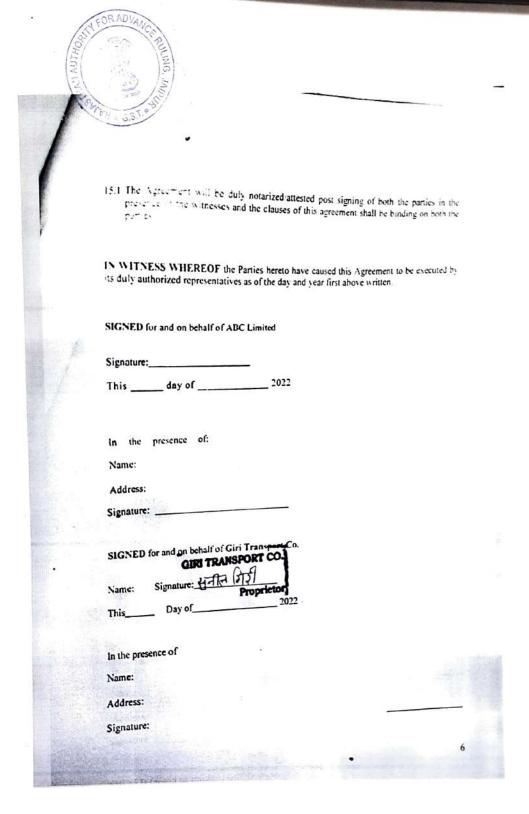
14. RESOLUTION OF DISPUTES

14.1 Any dispute arising between the Parties shall be determined by a court of competent jurisdiction in India and may upon agreement between the Parties be submitted for arbitration. The seat of arbitration shall be Jaipur.

15. AGREENIEN TRANSPORTERS
SOL ATTENDED Proprietor

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B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

Whether the value of diesel, provided by the customer (service recipient) to the trucks, under the facts & circumstances as specified hereinafter in Annexure "B" is to be added to the freight charged by the Applicant for the purposes of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') & the Rajasthan Goods and Services Tax Act ('RGST Act, 2017')?





C. PERSONAL HEARING

In the matter, personal hearing was granted to the applicant on 11.05.2022 & 14.06.2022. Advocate, Shri Vivek Sharma Advocate & Advocate, Shri Anurag Kalawatiya (Authorised Representative) of applicant appeared for PH. During the PH, they reiterated the submissions already made in the written application. They requested for early disposal of the application. Further, at the time of PH dated 14.06.2022, they submitted their additional submission in support of their application.

D. COMMENTS OF THE JURISDICTIONAL OFFICER

Comments received from the Deputy Commissioner, State Tax, Circle Suratgarh vide letter dated 04.06.2022 are as under:

- Mr. Sunil Giri (applicant), is the Proprietor of M/s. Giri Transport Co. The Applicant is a Goods Transport Agency ('GTA') having its registered place of business Near Swami Dharmashala, Ward 12, Suratgarh, having GST Registration number 08CRBPG5309N1ZM.
- The Applicant is about to enter into contract with its customer for providing service of transportation of goods by road.
- In this context the applicant has filed its application dated 09.03.2022 for Advance Ruling under sub section 2 of section 97 of the CGST Act 2017.
- 4. Applicant has sought advance ruling of the following question:

Whether the value of diesel, provided by the customer (service recipient) to the trucks, under the facts & circumstances as specified hereinafter in Annexure "B" is to be added to the freight charged by the Applicant for the purposes of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') & the Rajasthan Goods and Services Tax Act ('RGST Act, 2017')?

5. In Annexure 'B' he has submitted that:

In terms of the contract proposed being executed, diesel is to be consumed in providing the service of transportation of the goods, is in the scope of

customer and/or is provided on free of cost basis. The said diesel required for the trip will be filled in the truck deployed by the Applicant for the transportation, the parties have clear understanding that the said diesel shall be used/consumed exclusively for the transportation of goods belonging to the customer and that the property in the diesel will not pass to the Applicant. The freight for the transportation is fixed based on the scope of transportation contract, which excludes diesel. In the light of the above arrangement, while undertaking the activity of transportation of the vendor's goods under this agreement, the truck placed by applicant would be filled up with the diesel for the said trip. The said agreement is always for transportation to specific destinations only. The Applicant would be neither required to nor would be liable to pay for the diesel that would be filled in the trucks by the said customer.

As far as the Applicant is concerned, the Applicant will be required to send the trucks to the customer's destination. The trucks will report to the factory and after loading of goods, diesel calculated on the basis of load and distance, for the transportation of the said consignment to the destination, will be filled in the fuel tank of the truck.

On examination of the application, the applicable legal provisions of CGST Act are produced hereunder:

Valuation under section 15 CGST Act does not include the present transaction

Section 15 (1) of CGST Act clearly provides that price actually paid or payable for supply of goods/ services is to be the value of supply. Further, section 15 (2)(b) only includes the amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient and not included in the price actually paid or payable. Hence, this sub-section only applies when the contractual liability is that of the supplierbut the same stands paid by the recipient.

Section 15(2)(b) clearly provides that "any amount that the supplies is liable to pay" (in this case service recipient is not at all liable to pay for diesel) "but has been incurred by the recipient of supply" can only be added. [Since GTA is not liable for the diesel, it cannot be added in value of GTA service].

Authority of Advance Ruling, Chhattisgarh in case of Navodit Agarwal [STC/AAR/10/2018] held that the GST is chargeable on the value of diesel provided by the service recipient to GTA by raising separate bills. It is submitted that the said ruling will not apply to the case under examination as because in that (said) case, consideration was chargeable for the diesel provided by the service recipient by raising debit note on the GTA service provider (as is also expressively mentioned in para 3 (iv) of the order), whereas in the instant case, no consideration will be charged by the service recipient and hence no GST is chargeable thereon. The ruling on Navodit Agarwal being on opposite facts is not relevant for deciding the case of the applicant.

Thus, from the above provisions, in our opinion, GST is not leviable on Free of Cost (FOC) material provided by service recipient to applicant when such goods are in the scope of service recipient as per contractual terms.

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E. FINDINGS, ANALYSIS & CONCLUSION:

- We have gone through the facts of the matter, documents on record, prevailing legal references and submissions made by the Applicant and the comments received from the Jurisdictional Officer on application made by the applicant.
- The question of law raised by the Applicant is whether the value of diesel, provided by the service recipient to the trucks, under the facts and circumstances of the case is required to be added to the freight charged by the Applicant for the purposes of the GST Act.
- As per the submissions, the Applicant is about to enter into contract/
 Agreement with service recipient for providing GTA services. As per the
 terms of the draft agreement, the Applicant is required to transport the
 goods belonging to the service recipient by deploying trucks/ trailers. The
 scope of service of the Applicant is to provide the truck/ trailer along with
 the driver and report at the unit of the service recipient. Apart from above,
 the term of agreement provides that the fuel required for carrying out the
 transport of goods is in the scope of the service recipient and not in the
 scope of work of the Applicant. That fuel will be in the scope of the service
 recipient and the Applicant is not concerned, in any manner, with reference
 to the free of cost fuel.
 - Whereas, the jurisdictional officer in his report has given the views that GST is not leviable on Free of Cost (FOC) material provided by service recipient to applicant when such goods are in the scope of service recipient as per contractual terms.
 - We will firstly analyze the agreement proposed to be entered by the Applicant. The relevant part of the clauses of the agreement read as follows:

5.1 TRANSPORTATION ACTIVITIES

- 5.1.1 GTC has capacity of arranging trucks/trailers listed in Annexure-1 hereto. GTC will undertake transportation activities for ABC and the required trucks/trailers along with the driver and assistant will report at the day/time and place directed by ABC. The trucks/trailers so placed by GTC along with driver and assistance will be required to undertake transportation of the goods in accordance with the instructions of ABC.
- 5.1.2 GTC is not responsible for loading/unloading of the goods. GTC is to ensure that trucks/trailers report at the designated place of loading/unloading of the goods as per the directions and time allotted by ABC.
- 5.1.3 The activity of safe transportation is critical, and it is incumbent on GTC to ensure that goods are safely transported from point of origin to point of destination. For this, GTC ensures that it has experienced drivers and assistants who have the capacity to undertake transportation of industrial goods on trucks/trailers listed in

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Annexure-1 and understand load bearing capacity of the given trucks/trailers, maintenance of speed limit on full load, adequate safeguard measures on bad roads and all other measures warranted for safe transportation of goods.

- 5.1.4 GTC is strictly instructed that under no circumstances would any quantity of goods carried in the truck/trailer be disposed of, other than by way of delivery of the goods to the destination against receipt. For any reason, if the consignment is not accepted at the destination point, GTC will take necessary directions from ABC on the next steps. Under no circumstance, the consignment it to be brought back without prior written approval of ABC.
 - 5.1.5 Responsibility for any deviation and consequent losses during transportation vests solely on GTC.

5.2 CONSIDERATION

- 5.2.1 Prevalent freight rate for the specified destination will be notified by ABC from time to time and GTC will be under the obligation to ensure that only such freight, as accepted is charged.
- 5.2.2 GTC will submit its bills in duplicate along with receipted LR / GR. Photocopy or duplicate copy of LR is not acceptable by ABC along with the bill.
- 5.2.3 The value of fuel, which is in the scope of ABC, shall neither be adjusted with nor by any means affect the payment to be made by ABC against the bills issued by GTC.
- 5.2.4 All payment will be subject to deduction of income tax (TDS/TCS), wherever applicable any other taxes/levies which may be levied by Government from time to time.

5.3 RESPONSIBILITIES OF GTC

- 5.3.1 GTC is required to ensure that the vehicle is in good running condition, complies with Motor Vehicle Act requirements and will be responsible for any costs of parking fines and towing expenses for illegal parking.
- 5.3.2 GTC to engage trucks/trailers as per instructions given by ABC. The trucks/trailers are to effectively report with empty fuel tank. Fuel to the extent that the truck/trailer reaches the loading point safely is only to be ensured by GTC.
- 5.3.3 GTC would arrange to get all the trucks/trailers weighed first and then place the trucks/ trailers for loading. Before loading the material, dispatch instruction should be handed over along with tare weight slip, thereafter only, truck will be loaded. After loading the truck, the truck should be again weighed, and net weight of the material would be arrived at for preparation of Tax Invoice.

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5.3.4 GYC will ensure to obtain acknowledgement at the point of destination. At the destination place, goods carrying truck/trailer will be gross weighted and after unloading goods truck/trailer will be tare weighted. Net Quantity would be receipted by ABC. The said results obtained at the destination would be final and no dispute in respect thereof would be entertained by ABC.

5.4 RESPONSIBILITIES OF ABC

- 5.4.1 ABC to ensure that goods are available for loading at the stipulated time and place earmarked to GTC for bringing the trucks/trailers. Further, unloading of the goods takes place at the stipulated time and place instructed by ABC to GTC.
- 5.4.2 Fuel is the sole responsibility of ABC. ABC ensures that it will fill the truck/trailer with adequate fuel to ensure that its goods stand transported safely. For transportation of the goods, GTC is not responsible for the fuel in any manner.
- 5.4.3 ABC will provide necessary documents to the driver which are required to be carried during transportation under GST laws.
- 5.4.4 Fuel (diesel/any other fuel) used to propel the truck/trailer is not in the scope of work of GTC. It is agreed between the Parties that fuel which will be consumed during transportation, is in the scope of ABC and would be filled in the truck/trailer by ABC at the point of loading of the goods.
- 5.4.5 Such fuel shall be filled in the truck/trailer that is engaged for the concerned trip at the point of origin. The freight declared and agreed will not account for any cost/charges for fuel and GTC would not have any liability to pay for fuel for the said trip to be made by ABC. It is expressly clarified that the value of fuel which is in the scope of ABC shall by no means be interpreted as additional consideration payable for the transportation service provided by GTC or having been provided to the vehicle in lieu of freight. The ownership of the fuel would at no point be transferred to GTC or to the truck/trailer engaged. The truck/trailer is required to use the fuel only for the specific transportation and would not be eligible to dispose of the same in any other manner. If as an exception, fuel is given at the destination, all the conditions specified herein would be applicable as if fuel has been given at the source.
- 6. It is seen that as per the proposed agreement/contract, the fuel (diesel) is not in the scope of service of the Applicant. The proposed agreement/contract also provides that fuel (diesel) shall not be adjusted with nor affect the payment to be made by the service recipient against the bills issued by the applicant. Given this, as per the proposed contractual terms, the scope of service of the Applicant does not include the fuel (diesel) which is sought to be filled by the service recipient on free of cost (FOC) basis for the given transportation.

- 7. Section 7 CGST Act defines supply and the relevant part reads as follows:
 - 7(1) For the purposes of the Act, the expression "supply" includes (a) All forms of supply of goods or services or both such as sale, transfer, barter...
 - (b) ...
 - (c) The activities specified in Schedule I, made or agreed to be made without a consideration.
 - 8. As per section 7 CGST Act, all forms of supply of services are considered as "supply". It is also seen that Schedule I CGST Act which provides the levying GST on supplies made without consideration. In any case, it stood submitted by the Applicant that the proposed transaction is not being planned with related parties and therefore also Schedule I CGST Act is not applicable.
 - 9. Section 9 of CGST Act is the charging section and provides that CGST on supply of goods or services on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. The relevant part of section 15 CGST Act, which is valuation section reads as follows:

Value of taxable supply.

- 15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) The value of supply shall include—
- (a)
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both; ...
- It is seen that section 15 (2)(b) only includes the amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient and not included in the price actually paid or payable. Hence, trigger of section 15 (2)(b) CGST Act can be said to apply when the contractual liability is that of the supplier, but the same stands paid by the recipient. In the issue at hand, it is seen that the contractual liability of FOC diesel is not that of the Applicant. Therefore, FOC diesel cannot be included in the scope of supply proposed to be made by the Applicant. There is no economic gain made by the Applicant and no consideration received in reference to FOC diesel. Since contractual liability of FOC diesel is not proposed to be vested on the Applicant, the present proposed transaction cannot fall under section 15(2)(b) CGST Act. FOC diesel is a condition of the contract and not a consideration of the contract.



11. Our views are affirmed by Circular no. 47/27/2018 - GST dated 08.06.2018 wherein it is clarified that "1.2... while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017". The Ld. Appellate Authority for Advance Ruling, Karnataka in the matter of Re: Nash Industries (I) Pvt Ltd. 2019 (3) TMI 435- Appellate Authority for Advance Ruling, Karnataka after considering the above clarification and based on the terms of the contract decided the issue in favour of the Applicant's therein. Even in the matter of Re: Lear Automotive India Pvt Ltd. 2018(12) TMI 766, AAR Maharashtra, this Authority also arrived at the same conclusion in favour of the Applicant therein. In the matter of Lear Automotive India Pvt Ltd (supra), this Authority also noted Para 90 of Australian GST Ruling 2001/6 which provided that the recipient of supply may provide or make a thing available for the supplier to use in making the supply, however, the thing does not necessarily form consideration. An example provided in GSTR 2001/6 states as follows:

"Pretty Paint agrees to paint the interior of Peng's offices for \$10,000. Peng agrees to provide Pretty Paint with 1,000 cans of pink shimmer paint that Pretty Paint has advised will be enough to paint the offices. The paint provided by Peng is not consideration for Pretty Paint's supply. Pretty Paint's supply is the service of painting the offices. Although Pretty Paint would have charged more money if it had to also supply the paint, this is not relevant in this particular transaction."

- It is also seen that the Draft GST law proposed to include the following in section 15 (2) CGST Act "the value, appropriated as appropriate, of such goods and/or services as a supplied directly and directly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued". This provision has not been brought in the final enacted section 15 (2) of CGST Act. The Hon'ble Supreme Court recently in UOI v. Mohit Minerals Pvt Ltd. 2022 (5) TMI 968 (SC) has held that while interpreting a statute, one has to look into the history of the legislation to understand the full purport of the words used and the mischief sought to be remedied. Thus, the intent of the legislation is required to be seen. Therefore, the present section 15(2)(b) CGST Act cannot be used to include the given transaction since contractual liability on FOC diesel is not being vested on the Applicant.
 - 13. The issue is also revenue neutral inasmuch as even if the value of the free of cost diesel was required to be included in the value of GTA service then also the service recipient of the Applicant would be in a position to take input tax credit of the GST charged on such an invoice raised by the Applicant.

- The Hon'ble Supreme Court in CST v. Bhayana Builders (P) Ltd. 2018 14. (2) TMI 1325-SC has held that where the service provider receives free of cost goods/material from the service recipient, no amount is charged for such goods/material and, therefore, the value of such goods/ materials cannot be included in the gross amount charged by the service provider for the service provided by him. The issue whether free of cost diesel of the service recipient is required to be added in the value of the service provided by a supplier (service provider) came to be settled in the Service tax regime in the matter of Karamjeet Singh & Co Ltd. v. CCE & ST Raipur 2017 (9) TMI 1125-CESTAT New Delhi in favour of the assessee. The Departments appeal against this CESTAT's decision came to be dismissed by the Hon'ble Supreme Court in CCE v. Karamjeet Singh & Co Ltd. 2018 (7) TMI- SC Order. Similarly, FOC diesel provided by service recipients for various services such as mining, site formation and excavation service, helicopter charter service, business support service, etc. have been held not to be included in the value of such services in R.K. Transport Company v. CCE 2020 (11) TMI CESTAT New Delhi, Heligo Charters Pvt. Ltd. v. CST Mumbai-VI 2020 (4) TMI 182-CESTAT Mumbai, Ganpati Associates, Munshi Lal Durga Prasad v. CCE Jaipur 2019 (5) TMI 1233 - CESTAT New Delhi. These decisions are relevant for the present issue as well as they have come to follow the judgment of the Hon'ble Supreme Court.
 - a. The GST Advance Ruling Order given in Navodit Agarwal [No. STC/AAR/10/2018 dated 26.03.2019] passed by the Ld. GST AAR, Chhattisgarh is distinguishable. In the said matter there was exchange of debit notes and the terms of the contracts in the said matter when compared with the present application are different. It is also seen that Circular no. 47/27/2018-GST dated 08.06.2018 and the decisions and GST Advance Rulings discussed herein above do not appear to have been brought to the notice of the Ld. GST AAR, Chhattisgarh.
 - b. Therefore, we are of the view that it is the contractual obligation which is determinative of the transaction and value of GTA service is required to be ascertained accordingly. In the facts of the present application, FOC diesel is not required to be included in the value of GTA service provided by the Applicant since contractual obligation of the said FOC diesel is not on the Applicant.
 - 15. After examining and analysis of submissions of Applicant on Applicability of judicial pronouncements given under a repealed act/another act to the subsequent act/ act under consideration having pari-materia provisions.
 - 15.1 Applicability of judicial pronouncement given under service tax laws (Finance Act, 1994) to similar provisions under the GST Act.

Hon'ble Madhya Pradesh Appellate Authority for Advance Ruling in case of Bharat Oman Refineries Limited [MP/AAAR/07/2021] has held that –

- "7. We are of the considered view that the ratio the decision of the hon'ble Madras High Court in GE T&D India Ltd Vs Deputy Commr. of Central Excise, LTU, Chennai quoted above, is squarely applicable to the present case. Though the said judgment pertains to the Service Tax period we do not find any change in the position of law in this regard after introduction of GST. In view of the above finding, we hold that the Ld. AAR had erred in concluding that such activity was leviable to GST."
- 15.2 Court Ruling given in case of repealed act are binding while interpreting pari-materia provisions of subsequent act:

Hon'ble Andhra Pradesh High Court in case of Simmiti Arjuna [2004 SCC OnLine AP 893] has held that -

- "9. To my mind when the provision is in parimateria the interpretation placed by a Court of record even with reference to repealed Act is a precedent binding and all authorities while interpreting an amended provision. There is no reason warranting any deviation from the law laid down by this Court in K. Sundara Rao v. V. Raghava Rao (supra). Therefore, I am of the opinion that what is prohibited is vote by same personin more than one ward and no prohibition for a person to vote in two Gram Panchayats on the same day if he is registered as voter. On that ground, therefore, the Election Tribunal could not have invalidated the votes of P.W. 4 and his wife. This Court, therefore, holds that the judgment of the Tribunal suffers from this infirmity which is beyond cure."
- 15.3 Supreme Court applied rulings of High Court given in context of repealed act (Income Tax Act, 1922) while deciding the matter in respect to subsequent act (Income Tax Act, 1961).

Hon'ble Supreme Court in case of Pradip J. Mehta vs CIT [2008 (14) SCC 283] while interpreting the pari-materia provisions of Section 4B of Income Tax Act 1922 (which was repealed and replaced by Income Tax Act, 1961) and Section 6(6)(a) of Income Tax Act, 1961 relied upon the judgments of High Court of Travancore [P.M. I. Bava v. CIT – 1955 (27) ITR 463] and Hon'ble High Court of Bombay [Manibhai S. Patel v. CIT- 1953 (23) ITR 27] which were given under the repealed Income Tax Act, 1922. Relevant extract of the judgment is as under –

- 15. Section 6(6)(a) of the 1961 Act corresponds to and is in pari material with Section 4-(B) of the Income Tax Act, 1922......
- 25. Otherwise also, we find ourselves in agreement with the view taken by the three High Courts, namely the Patna High Court in C.N. Townsend v. CIT, the Bombay High Court in Manibhai S. Patel v. CIT and the High Court of Travancore and Cochin in P.M. I. Bava v. CIT.

Applying the judgment of Hon'ble High Court of Bombay clearly show that the judgments given in context of an act repealed subsequently do not affect the interpretation given by Courts.

16. In view of the extensive deliberations, as held herein above, we pass an Order as follows:

ORDER

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

For reasons as discussed in the body of the Order, the questions are answered thus -

Question:

Whether the value of diesel, provided by the customer (service recipient) to the trucks, under the facts and circumstances of the case is required to be added to the freight charged by the Applicant for the purposes of the Central Goods & Service Tax Act, 2017 (CGST Act, 2017) & the Rajasthan Goods & Service Tax Act, 2017 (RCGST Act, 2017?

Answer:

The value of diesel filled free of cost (FOC) by the service recipient is not includable in the value of the GTA service proposed to be provided by the Applicant in the facts and circumstances of the present application subject to conditions as mentioned in draft Transport Service Agreement/ contract incorporated in the body of this decision/ruling.

(Vikas Kumar Jeph) MEMBER CENTRAL TAX OLIVI FOR ADIANGO RULING STATE OF G.S.T. & B.S.T. & B.S.T

(M. S. Kavia) 66/2022 MEMBER STATE TAX

SPEED POST

M/s Sunil Giri, Near Swami Dharmshala, ward 12, Suratgarh, 335804- Rajasthan.

F.No. AAR/SG/2022-23/ 109 -1/3

Date: 16/06/2022



- The Chief Commissioner, CGST and Central Excise, Jaipur Zone, NCRB, Statue Circle, Jaipur-302005 (Raj.).
- The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
- The Commissioner, Central Tax, CGST and Central Excise Commissionerate, Jodhpur (Rajasthan).
- The Dy. Commissioner/CTO, State Tax, Ward-Circle-Suratgarh, near Sadar Police Station- Suratgarh (Rajasthan).