

**AUTHORITY FOR ADVANCE RULING, TAMILNADU**  
**INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,**  
**5<sup>TH</sup> FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,**  
**CHENNAI – 600 003.**  
**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE**  
**GOODS AND SERVICES TAX ACT, 2017.**

**Members present are:**

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,  
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/ Member,  
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

**ORDER No. 31/AAR/2022 DATED: 29.07.2022**

GSTIN Number, if any / User id		33AADCO3578R1ZS
Legal Name of Applicant		OLA ELECTRIC TECHNOLOGIES PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		SP-7A, Primus Building, 1 <sup>st</sup> Floor, Guindy Industrial Estate, Chennai-600032
Details of Application		GST ARA- 01 Application Sl.No. 04/2022/ARA dated: 27.01.2022
Concerned Officer		Centre: Chennai South State: Guindy Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in Brief)	The applicant has ventured into production of vehicles which will be run by electricity with a vision towards green mobility.
Issue/s on which advance ruling required		Determination of liability to pay tax on any goods or services or both

	2. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.
Question(s) on which advance ruling is required	<p>1. Whether the transaction of transfer of right to do integration testing, install and market software from Tamilnadu cost centre to Karnataka Cost centre shall be leviable to GST given that such transaction is being executed between two cost centers of same entity.</p> <p>2. If the answer to the above is affirmative then whether such supply be considered as goods or services?</p>

**Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.**

**At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.**

OLA ELECTRIC TECHNOLOGIES PRIVATE LIMITED, SP-7A, Primus Building, 1<sup>st</sup> Floor, Guindy Industrial Estate, Chennai-600032 are registered under GST with GSTIN 33AADCO3578R1ZS (hereinafter called the Applicant). The applicant has sought Advance Ruling on the following questions:

1. Whether the transaction of transfer of right to do integration testing, install and market software from Tamilnadu cost centre to Karnataka Cost centre shall be leviable to GST given that such transaction is being executed between two cost centers of same entity.



2. If the answer to the above is affirmative then whether such supply be considered as goods or services?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that their Company is incorporated in India with its operation and experience centres in various States. Such different premises of the Company are recognized as different Cost Centre. The Company is setting up a factory for manufacture of electric two-wheelers in Tamil Nadu whereas the head office and the additional software development centre is in Bengaluru, Karnataka. The Company shall be selling the vehicle to the end user and will also offer a performance upgrade (which is an optional accessory) which will enhance performance i.e. battery performance & speed range in the vehicle. The manufacturing of vehicle will be carried out by Tamil Nadu Cost Centre and the sale thereafter will take place through the distribution centres located across the country, wherein the performance upgrade software shall be sold directly by Karnataka Cost Centre to the end user. The intricacies of the transaction submitted by the applicant are provided below —

- A. Manufacture of vehicle by the Tamil Nadu Cost Centre
- B. Stock transfer of vehicles by the Tamil Nadu Cost Centre to distribution Centres across the country
- C. Sale of vehicles from the distribution centres to the end customer
- D. Tamil Nadu Cost Centre to give a right to Karnataka Cost Centre to carry out integration testing, install, and market the software on the vehicles manufactured by the Tamil Nadu Cost Centre.

Such software of performance upgrade is developed by the Karnataka Cost Centre and is under the ownership of the Karnataka Cost Centre. The software has no value in the market till the time Tamil Nadu Cost Centre agrees to integrate the same with the vehicle and allow Karnataka Cost Centre to sell, upload and maintain the software on the vehicle manufactured by the Tamil Nadu Cost Centre.

E. Tamil Nadu to charge a recurring consideration from Karnataka Cost Centre for the said transfer of right. First of such recurring consideration has been agreed at INR 1,05,00,00,000/-.

F. Sale of performance upgrade software to the end user directly by Karnataka Cost Centre as per customer requirement.

The applicant has obtained GST Registration for Tamilnadu Cost Centre and Karnatake Cost Centre.

2.2 On interpretation of law, the applicant has referred to various legal provisions of the GST law viz, definitions of goods and services under Section 2(52), 2(102), supply u/s 7, Schedule I and II, Section 15 of CGST Act 2017 and Rule 28 of the CGST Rules 2017. The Market Support fee is to compensate the applicant, where the guaranteed profit margin is not being maintained. The activity of tolerating an act by not being able to maintain the guaranteed margin upon distribution, shall be considered as 'supply of service' as it is within the ambit of clause 5(e) of Schedule II of the Act.

2.3 The applicant has stated that as per Schedule I of the CGST Act, supply of goods or services or both between related persons or distinct persons would qualify as supply under GST and trigger a levy of GST. They have submitted that when one Cost Centre is transferring the rights over a software to another Cost Centre of the same entity, the same shall not qualify as supply. The above view is based on the fact that both the Cost Centre's are merely registrations of the same legal entity whereby Tamil Nadu Cost Centre is transferring the right to install, test and market a software so as to enable the Karnataka Cost Centre in selling the same to end user. Consideration is being charged by the former from the latter just to allocate proper profits in their books of accounts since each Cost Centre maintains its own profitability. They have also stated that the Karnataka Cost Centre is the software development and maintenance hub of Ola and they have the expertise to implement the performance upgrade software into the vehicles of end user, therefore it only makes sense that the responsibility for carrying out such operation is entrusted upon the experts. However, in order to maintain the Cost Centre profitability, it is important to charge each Cost Centre for the work being carried out by them, so that the correct profitability is reflected for Cost Centre. Further, on the basis of Section 25(5) of the CGST Act, the Applicant is of the view that although Tamil Nadu and Karnataka Cost Centres, being two separate GST registrations, qualify as distinct persons under the GST regime but

the activity happening between them does not qualify as 'supply' since for being a 'supply', goods or services or both must be involved. Transferring of rights for integration testing, install and market the software shall not take shape of any 'service' since there cannot be 'service' between the Cost Centre's of the same legal entity. Hence, the said transaction does not qualify as supply, the same should not be liable to any GST

3.1 The applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 25.02.2022. The Authorised Representative (AR) Shri. Saurabh Agarwal, Partner, EY appeared for the hearing and reiterated the submissions made. He stated that Tamilnadu Cost Centre raises invoices on Karnataka Cost Centre for extending the right to use vehicle for integration test of the software developed by Karnataka Cost Centre and sell it. The Software integration is optional for customers and Karnataka cost centre will charge the customers separately and will also pay TN cost centre. They were asked to furnish copy of invoice between the cost centres; copy of invoice for sale of vehicle from TN cost centre to the depot/ultimate customer; Document for arriving at the cost for such transaction and accounting in the respective cost centres; write-up on the software.

3.2 The applicant was addressed vide letter dated 08.04.2022 to furnish the documents called for during the hearing held on 25.02.2022. The applicant vide their submissions dated 12.04.2022 furnished the following documents:

- Copy of invoice dated 31.09.2021 raised by Tamil Nadu Cost Centre on Karnataka Cost Centre for the right to install performance upgrade software on the scooter manufactured by the factory
- Copy of invoice dated 31.01.2022 raised by Tamil Nadu cost centre on Maharashtra Cost Centre for sale of Scooters 39 Nos.
- Copy of invoice dated 31.01.2022 raised by Tamil Nadu cost centre on Gujarat Cost Centre for sale of Scooters 39 Nos.
- Copy of invoice dated 12.01.2022 raised by Karnataka Cost Centre on Praveen Kumar G for performance upgrade
- Copy of invoice dated 12.01.2022 raised by Karnataka Cost Centre on Sanjay Chawla for performance upgrade



- The applicant has stated that the software has no value in the market till the time the TN cost centre agrees to integrate the same with the vehicle and allow the Karnataka Cost Centre to sell, upload and maintain the software on the vehicle manufactured by TN Cost Centre. There is no intrinsic value which can be assigned to such granting of right, hence the value is mutually agreed between two cost centres. The applicant has relied on the Advance Ruling issued by Tamil Nadu Advance Ruling Authority in the case of M/s Thirumalai Chemicals Ltd [TN/14/AAR/2020] and the ruling issued by TN Appellate Authority for Advance Ruling in the case of M/s Specsmaakers Opticians Private Limited, wherein it has been ruled that invoice value should be "open market value" where the valuation is determined for transactions between distinct persons, subject to prescribed conditions.
- The write up on the software furnished by the applicant is given below:

The company offers software to its customers which is aimed at upgrading the performance of the scooter. The installation of such software helps in enhancing the battery performance and speed range of the vehicle, among other things. Through software calibration of the motor control unit (MCU) and the battery Management system the performance features of the motor and battery and the overall vehicle can be modified to unlock premium performance for the customers. The software is developed by the Karnataka cost centre and has ownership over it. It is directly sold to the end user. It is not part of standard package given in form of sale of scooter, rather is optional and is sold separately to customer. The scooters are sold by the TN cost centre and since the software is developed specifically for such scooters it cannot be used for any other purpose.

3.3 On perusal of the above submissions, the applicant was addressed vide letter dated 28.04.2022 to furnish the following details:

Agreement between the Tamilnadu and Karnataka Cost centres for arriving at a mutually acceptable value for the software; Accounting of such transaction i.e. whether the amount received from the Karnataka Cost centre is considered as profit earned on supply of vehicle (goods) or as income from business (service) and the proportionality for arriving at the value for transaction-along with necessary substantiating documents.

3.4 The applicant vide their letter dated 19.05.2022 submitted the following facts:

Agreement between the Tamilnadu and Karnataka Cost centres for arriving at a mutually acceptable value: As both the cost centres are a part of same company and do not have a legal recognition of their own, there is no express agreement entered between the cost centres

whether the amount received from the Karnataka Cost centre is considered as profit earned on supply of vehicle or as income from services and the proportionality for arriving at the value for transaction: As both the cost centres are a part of same company, the recoveries made from any cost centre does not amount to profit or income recognized in book of accounts. Since, income of one cost centre forms expense of other, the total amount is netted and the same has no impact on financial position of the company.

4. The Centre Jurisdictional Authority, Chennai South Commissionerate, who has administrative control over the applicant was addressed vide this office letter dated 03.02.2022 requiring to furnish comments on the issue raised by the applicant and report whether any proceedings are pending in respect of the applicant. The said authority has not furnished the report in spite of reminders dated 18.02.2022, 23.03.2022 and 09.06.2022. Hence, it is construed that no proceedings are pending in respect of the applicant.

5. The State Jurisdictional Authority has submitted that there are no pending proceedings in the applicant's case in their jurisdiction.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral submissions made at the time of Virtual hearing, submissions made after hearing. The Company is a manufacturer of electric two-wheelers and they have different operation and experience centers all over India which are recognized as different cost centers. The manufacturing is done at the Tamilnadu cost center, the applicant and the sale thereafter will take place through the distribution centers located across the country. The vehicle will be sold to the end user and a performance upgrade, which will enhance performance i.e., battery performance and speed range in the vehicle is offered as an optional facility to the end user at additional cost. The applicant will give a right to Karnataka cost center to carry out integration, testing, installation and

marketing the software on vehicles manufactured by them. Such software, the property of the Karnataka cost center is said to have no value in the market till the applicant agrees to integrate the same with the vehicle and allow Karnataka cost center to sell, upload and maintain the software on the vehicles manufactured by them. In this scenario, the applicant has filed the application for the following questions:-

1. Whether the transaction of transfer of right to do integration testing, install and market software from Tamilnadu cost center to Karnataka Cost center shall be leviable to GST given that such transaction is being executed between two cost center's on same entity.
2. If the answer to the above is affirmative then whether such supply be considered as goods or services?

The above questions being on determination of liability to pay tax on the activities carried on by the applicant and whether such activities carried on results in supply of goods or services or both were found admissible under Section 97(2)(e&g) the CGST Act, 2017 and are taken up for consideration on merits.

7.1 From the submissions of the applicant, it is observed that the intricacies of the transaction is as follows:-

1. Vehicle is manufactured by the Tamil Nadu Cost Centre
2. Stock transferred by the Tamil Nadu Cost Centre to distribution centers across the country
3. Vehicles are sold from the distribution centers to the end customer
4. Tamil Nadu Cost Centre gives the right to Karnataka Cost Centre to carry out integration, testing, install, and market the software on the vehicles manufactured by the Tamil Nadu Cost Centre.

Thus the transaction involved is the transfer of right to carry out integration, testing, installation and marketing of the software on the vehicles manufactured by the applicant to Karnataka Cost center. It has been stated by the applicant that the software has no value in the market till they agree to integrate the same with the vehicle and allow Karnataka cost center to sell, upload and maintain the software on the vehicle manufactured by them. The applicant is charging a recurring consideration from Karnataka cost center for the transfer of right. The first payment of such recurring consideration has been agreed upon at



Rs.1,05,00,00,000/- . However from the invoices submitted, invoice no. OET/CC/001 dt. 30.09.2021, it is seen that the applicant has billed the Karnataka cost center a sum of Rs.1,02,75,11,617/- on which 18% IGST has been paid under the description 'fee for right to install performance upgrade software on the scooter manufactured by factory'.

7.2 The first question to be answered is whether the transaction of transfer of right to do integration testing, install and market software by the applicant to Karnataka Cost center shall be leviable to GST given that such transaction is being executed between two cost centers of the same Company. To answer this question, it should be seen if the transaction is leviable to GST in the first place as the same is said to be executed between two distinct entities of the same company. Hence the transaction to be leviable to GST should fall within the ambit of supply and then such supply should be between two distinct entities. 'Supply' has been defined under CGST Act, 2017 as follows:-

***Section 7. Scope of supply.-***

*(1) For the purposes of this Act, the expression - "supply" includes-*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

From the above definition, the meaning and scope of supply under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply:

- Supply of goods or services or both ;
- Supply should be made for a consideration;
- Supply should be made in the course or furtherance of business;
- Supply should be a taxable supply.

7.3 As per the definition, any transaction is a supply only when it is made for consideration and is a taxable supply. In the instant case, the supply is that of transfer of right to do integration testing, install and market software from the applicant to Karnataka Cost center and the consideration involved is agreed upon by both centers, wherein it has been stated that the applicant is charging a recurring consideration from Karnataka cost center for the transfer of right. The first payment of such recurring consideration has been agreed upon at

Rs.1,05,00,00,000/- and the invoice no. OET/CC/001 dt. 30.09.2021, for Rs.1,02,75,11,617/- has been raised. Applicant claims that such an invoice has been raised to set out the books of accounts of cost centers and to charge each cost center for the work being carried out by them. It is their contention that the recoveries made from any of the cost centers does not amount to profit or income recognized in the books of accounts of the company. To analyse whether the said amount charged/recovered from the cost centres is a consideration under Section 2(31) of the CGST Act, 2017, the same is reproduced as under:-

*"consideration" in relation to the supply of goods or services or both includes-*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

As per the above definition, any payment made or to be made/ the monetary value of any act in response to the supply of any goods/services is included as consideration. The invoice raised though for book adjustments established the monetary value for the act of transfer of right by the applicant and hence is definitely a consideration. Thus the criterion for the transaction being a supply is satisfied in as much as the transfer of right is made for a consideration.

7.4 Applicant has contended that the transfer is between two cost centers of the same entity and cannot be construed to be a supply. Now the distinct point to be analysed is if the transfer of such right between the applicant and Karnataka cost centers is a supply. In this connection, it is pertinent to note that for the applicant and the Karnataka Cost Center of the Company are distinct persons, with separate GST Registration. Also, it has been established in Para supra that the transfer of rights has a monetary value which amounts to consideration. Also, as per Schedule-I to the GST Act, specifies those 'Activities to be treated as Supply even if made without consideration', wherein

*(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business;*



is stated. Thus, it is clear that the supply of goods or services between both related and distinct person when made in the course of furtherance of business is an activity to be treated as supply. In the case at hand, the cost centers are located at two different states and applicant has admitted that they have two separate registrations for such centers. Hence they are distinct persons and the supply is also found to be in furtherance of business only in as much as the software when installed is charged a specific cost and it is said to optimize certain features of the product. The software though optional at the hands of the end user, is said to enhance battery performance and speed range of the vehicle. In addition to such performance upgradation, the software also unlocks several technological features of the scooter such as speed, modes, range, acceleration performance, charging performance etc. The Karnataka cost center sells the software directly to the end users. Thus the transfer of right to install the software enhancing the performance of the scooter is carried on for a consideration and in furtherance of business. Thus the contention of the applicant that the transfer of right to install the software not qualifying as supply does not hold water. Such a transfer is done between two distinct persons, for a consideration for which the first payment is agreed upon as Rs.1,05,00,00,000 /- and invoice no. OET/CC/001 dt. 30.09.2021, for Rs.1,02,75,11,617/-has been raised is found to be in furtherance of business. Thus, the extension of right by the applicant to the distinct persons as specified in Section 25, is in the course of furtherance of business for a pre-determined consideration & therefore such transfer of right is clearly a supply which is leviable to GST.

8. Now coming to the question of whether the activity carried on by the applicant is supply of goods or services is taken up for discussion. Applicant has submitted that the vehicles are sent to respective distribution centers all over India. Karnataka cost center is the software development and maintenance hub of Ola and they implement the performance upgrade software into the vehicles of the end user. Hence it is seen that the goods namely vehicles are moving from the TN cost center to all distribution centers and the software is the product of Karnataka cost center. On perusal of invoices submitted by the applicant, it is seen that the Performance upgrade software is only sold by the Karnataka cost center to the end user. The details are as under:



(i) Invoice no.4400002312 dt. 12.01.2022 has been raised for such Performance upgrade software for Shri.Praveen kumar residing at Bengaluru for a sum of Rs.14,407/.

(ii) Invoice no.4400002412 dt. 12.01.2022 has been raised for such Performance upgrade software for Shri.Sanjay Chawla residing at Delhi for a sum of Rs.14,407/.

Thus it is seen that the vehicles move from the applicant to all distribution centers in India namely Gujarat, Maharastra and the Performance upgrade software is marketed by the Karnataka cost center, on the applicant agreeing for the same. Hence the applicant is only agreeing to the act of carrying out integration testing, install, and market the software on the vehicles manufactured by them by the Karnataka Cost Centre, at the behest of the end-users. Thus the supply taking place between the applicant and the Karnataka cost center is of the Agreeing the Karnataka Cost Center to carry out the installation and marketing of the software. Hence it is clear that the supply involved is the supply of 'Service' and not of goods.


9. To sum up, the transfer of right to do integration testing, installation and marketing software from the applicant to Karnataka Cost centre is leviable to GST as such transaction is being executed between two distinct persons i.e., two cost centers of the same entity. Further as such supply is found to be involving only transfer of the said right, we conclude that the supply is of services and not of goods.

10. In view of the above facts, we rule as under:

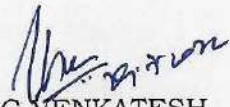
#### **RULING**

1. The transaction of transfer of right to do integration testing, installation and marketing software from the applicant to Karnataka Cost centre of the company is leviable to GST.

2. The supply of such right is supply of services.

  
Smt. K.LATHA  
Member (SGST)



  
Shri.T.G.VENKATESH  
(Member CGST)

To  
OLA ELECTRIC TECHNOLOGIES PRIVATE LIMITED,  
SP-7A, Primus Building, 1<sup>st</sup> Floor,  
Guindy Industrial Estate,  
Chennai-600032 **// BY SPEED POST WITH ACK.DUE //**

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,  
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,  
IInd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Commissioner of GST & Central Excise,  
Chennai South Commissionerate, MHU Complex, 692, Annasalai,  
Nandanam, Chennai-600 035.
4. The Assistant Commissioner(St), Guindy Assessment Circle,  
Integrated Commercial Taxes & Registration Department, South Tower,  
Room No. 253, II Floor, Government Farm Building,  
Nandanam, Chennai- 600 035.
5. Master File/ Spare - 2.