

**AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH**  
**4, Vibhuti Khand, Gomti Nagar, Lucknow**

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

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in  
respect to application dated 15.02.2018 from M/s. GE Diesel Locomotive  
Pvt. Ltd., Shahjanpur – Order issued – Reg.

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1. M/s. GE Diesel Locomotive Private Limited, Locomotive Shed Roza, Post Roza RS, Shahjanpur, Uttar Pradesh (here in after called the applicant), is a registered assessee under GST having GSTN :09AAGCG1589H1ZA.
2. The Applicant is engaged in the business of import and manufacture of rail locomotive engines for supply to Indian Railways. The Applicant had made a bid for a tender floated by the Indian Railways for supply of locomotive engines and their comprehensive maintenance. In pursuance to the bid, the Applicant has been awarded a contract by President of India represented by Director, Mechanical Engineering (Works), Ministry of Railways ('Indian Railways') Government of India for setting up of factory at Bihar for assembly/ manufacture of locomotives for supply to Indian Railways and comprehensive maintenance of said rail locomotives.
3. The Applicant in this application dated 15.02.2018 has raised following issues for determination by the Authority –
  - a) Whether supply of comprehensive annual maintenance service which may also involve incidental supply of spare parts/ goods should be classified as a composite supply or mixed supply?
  - b) In case the said contract is considered as composite supply, what is the principal supply between goods or services?
  - c) In case goods are considered as principal supply, how the taxability should be determined considering the following:
    - i. The contract would entail supply of various goods falling under different tax brackets
    - ii. These goods would be supplied on a need basis as and when required at different point(s) of time
    - iii. There is no fixed value ascribed for goods in the contract considering these goods would be supplied depending upon condition of the locomotive at the time of maintenance



- d) In case services are considered as principal supply, what tax rate should be applicable?
- e) In case of the said contract, what is the relevant place of supply and type of tax which needs to be discharged (i.e. CGST & SGST or IGST)?
4. The applicant was granted a personal hearing on 20.04.2018. Shri Ankush Goel, Tax Head, M/s. GE Diesel Locomotive Private Ltd., and Rjeev Dewan, Consultant, M/s. GE Diesel Locomotive Private Ltd appeared on behalf of the applicant. In the written submission, the applicant has submitted that they are engaged for supplying 1000 locomotives as well as ensuring comprehensive annual maintenance for first 500 locomotives for an agreed period at its two locomotive maintenance sheds. The first locomotive maintenance shed is being set-up in the State of Uttar Pradesh and the second locomotive maintenance shed will be set-up in the State of Gujarat in future. Further, the consideration for comprehensive annual maintenance is pre-agreed as a percentage of the locomotive price. The copy of the agreement executed between the Applicant and Indian Railways for the said scope of work was also submitted.
5. On the basis of the facts disclosed in the application, the oral and written submission made at the time of personal hearing and the documents produced during the personal hearing, it was decided to admit application.
6. As per Section 2(30) of CGST Tax Act, 2017/SGST Tax Act, 2017 defines composite supply to mean –

*“a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply”.*

Illustration - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

And as per Section 2(74) of the CGST Tax Act, 2017/SGST Tax Act, 2017 has defined the term ‘mixed supply’ to mean –

*“two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply”*

Illustration - A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.





Further, Section 2(90) of the CGST Tax Act, 2017/SGST Tax Act, 2017 has defined the term 'principal supply' to mean -

*"the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary".*

The said contract merits to be considered to be a composite supply of service and principal supply is service inasmuch as the supply of goods is merely incidental to the maintenance contract in the given facts and circumstances.

In terms of Section 8 of the CGST Tax Act, 2017/SGST Tax Act, 2017, it has been clarified that a composite supply comprising two or more supplies, one of which is a principal supply would be treated as supply of such principal supply. The relevant extract of Section 8 of the CGST Act provides as follows:

*"8. Tax liability on composite and mixed supplies. – The tax liability on a composite or a mixed supply, shall be determined in the following manner, namely:-*

*(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply"*

7. The essential conditions for a supply to qualify as composite supply can be highlighted as under:
- Two or more taxable supplies of goods or services or both;
  - The taxable supplies should be naturally bundled;
  - The taxable supplies should be supplied in conjunction with each other; and
  - One taxable supply should be a principal supply

In such case, the supply which is the principal supply is treated as the main supply and the entire transaction should be eligible to GST as per the principal supply.

8. Section 10(1)(a) of the Integrated Goods and Services Tax Act, 2017 ('the IGST Act') provides for determination of the place of supply of goods. In case of supply involving movement of goods, the place of supply would be the place where the goods are handed over to the recipient. The relevant extract has been given below:

*"10. (1) (a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;..."*

9. Further, Section 12(2) of the IGST Act provides for determination of place of supply of services when the supplier and recipient are both in India. In general, where the supply of service is made to a registered person, the place of supply has been defined to be the location of such person. The relevant extract reads as follows:



*“12. (2) The place of supply of services, except the services specified in sub-sections (3) to (14),—*

*(a) made to a registered person shall be the location of such person;..”*

10. The Service Code for the maintenance and repair service of transport machinery and equipment is 998714 and the prescribed rate of GST is :-

CGST @ 9% of the taxable value

SGST @ 9% of the taxable value

or

IGST @ 18% of the taxable value.

Where the service provider and service recipient of a service are located in India, the provisions of Section 12 of the of IGST Act, 2017 determine the place of supply of services. Sub-section 10 of the sec.12 ibid enjoins that place of supply if service on-board a train shall be the first scheduled points of departure of the convenience. If the location of the supplier and place of are not in the same State or Union Territory, it shall be trated as Inter-State supply of Services and IGST shall be levied, otherwise CGST & SGST shall be levied.

If the supply of services is not made on-board a train, the location of a registered service recipient shall be the place of supply of service as per Section 12(2) ibid.

11. The jurisdictional Commissioner, CGST i.e. the Commissioner, CGST & CX, Lucknow has also submitted views on the above said Advance Ruling application which are as under –

The activity of the party is a supply of service and principal supply of service in as much as the supply of goods is merely incidental to the maintenance contract. Since the supply of maintenance service is for one and fixed price with or without supply of spare parts/ goods and supply of service and goods is made in conjunction with each other in the ordinary course maintenance service, to the extent of presence of all the necessary ingredients cited in the legal provisions quoted supra, is naturally bundled with incidental supply of goods, it is a case of composite supply of service. Further, the SAC code for such service is 998714 and prescribed rate of tax is CGST @9% and SGST @9% or IGST @18% of the taxable value.

12. In view of the above, we rule as under;

#### **RULING**

The point wise clarifications are as under:-





- a) Whether supply of comprehensive annual maintenance service which may also involve incidental supply of spare parts/ goods should be classified as a composite supply or mixed supply?

**Ans. -** Since the supply of maintenance service is for a one and fixed price with or without supply of spare parts/goods and supply of service and goods is made in conjunction with each other in the ordinary course as per maintenance contracts, this maintenance service to the extent of presence of all the necessary ingredients cited in the legal provisions quoted supra, is naturally bundled with the incidental supply of goods., it is case of composite supply of service.

- b) In case the said contract is considered as composite supply, what is the principal supply between goods or services?

**Ans. -** The said contract merits to be considered to be a composite supply of service, and principal supply is service inasmuch as the supply of goods is merely incidental to the maintenance contract in the given facts and circumstances.

- c) In case goods are considered as principal supply, how the taxability should be determined considering the following:

- i. The contract would entail supply of various goods falling under different tax brackets
- ii. These goods would be supplied on a need basis as and when required at different point(s) of time
- iii. There is no fixed value ascribed for goods in the contract considering these goods would be supplied depending upon condition of the locomotive at the time of maintenance

**Ans. -** Not Applicable because it is supply of service.

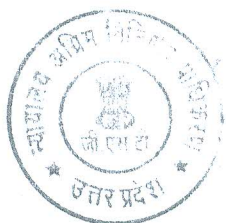
- d) In case services are considered as principal supply, what tax rate should be applicable?

**Ans.-** The Service Code for the maintenance and repair service of transport machinery and equipment is 998714 and the prescribed rate of GST is :-

CGST @ 9% of the taxable value, SGST @ 9% of the taxable value or IGST @ 18% of the taxable value.

- e) In case of the said contract, what is the relevant place of supply and type of tax which needs to be discharged (i.e. CGST & SGST or IGST)?

**Ans.-** Where the service provider and service recipient of a service are located in India, the provisions of Section 12 of the of IGST Act, 2017 determine the place of supply of services. Sub-section 10 of the sec.12 ibid reads as under –



The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

Sub-section 10 of the sec.12 ibid enjoins that place of supply if service on-board a train shall be the first scheduled points of departure of the convenience. If the location of the supplier and place of service are not in the same State or Union Territory, it shall be treated as Inter-State supply of Services and IGST shall be levied, otherwise CGST & SGST shall be levied. If the supply of services is not made on-board a train, the location of a registered service recipient shall be the place of supply of service as per Section 12(2) ibid.

*Sd/-*  
16.05.2018  
DINESH KUMAR, IRS  
Additional Commissioner  
CGST & Central Excise, Lucknow  
(Member)

*Sd/-*  
16.05.2018  
SANJAY KUMAR PATHAK  
Joint Commissioner (Law),  
Commercial Tax, Uttar Pradesh  
(Member)

सत्य प्रतिलिपि

✓ To,  
M/s. GE Diesel Locomotive Private Limited,  
Locomotive Shed Roza, Post Roza RS,  
Shahjanpur, Uttar Pradesh

*[Signature]*  
16.05.2018  
(संजय कुमार पाठक)  
सत्य

#### **AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH**

Order No. 04  
Copy to -

Date: 16.05.2018

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Advance Ruling Appellate Authority.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Advance Ruling Appellate Authority.
3. Through the Additional Commissioner, Grade - I, Commercial Tax, Bareilly to jurisdictional tax assessing officers.
4. The Joint Commissioner, CGST & Central Excise, Lucknow

