

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 22.01.2020 from M/s North Shore Technologies Private Limited, Noida, Gautam Buddha Nagar, U.P.. - Order- Reg.

- 1). M/s North Shore Technologies Private Limited, 1st Floor, Tower B, Plot No.-5, Logix Techno Park, Sector-127, Noida, Gautam Buddha Nagar, Uttar Pradesh-201 301 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAACN9477H1ZY.
- 2). The applicant is a private limited company, engaged in the business of software development, consultancy & staff augmentation services from its business premises.
- 3). As per the application for advance ruling filed by the applicant, they provide optional subsidized shared transport facility to their employees for to and fro commutation between office and residence. This facility is provided by third party vendor who issues bill in the name of the applicant and charges GST therein. However, the applicant has not availed any input tax credit on the same. As regard to the payment to the third party vendor, towards transport charges, the applicant deducts subsidized amount from the salaries of employees and bear the balance cost itself.
- 4). As per applicant, their standard working hours are 12.00 pm to 09.00 pm and as per Section 22 of the U.P. Dukaan aur Vanijya Adhithan Adhiniyam, 1962 read with Notification No. 2398/36-03-05/dukan-Vanijya/99 dated 28.10.2005, they are required to arrange transport facility for the female workers for onwards and return journey, between work place and home, if the female workers are employed from 7.00 pm to 10.00 am. In view of this, the applicant is providing transport facility to its employees.
- 5). Accordingly, the following questions have been asked by the applicant, in his application dated 22.01.2020, before the Authority: –
 - i. *Whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be*

construed as "Supply of service" by the company to its employees?

- ii. *If the answer to above question is in affirmative, how the value of subsidized shared transport facility provided to employees under employment contract, will be determined by the applicant?*
- iii. *If the answer to question 1 is in affirmative, under which service classification, the activity of arranging transport facility for employees, would fall?*
- iv. *If the answer to question 1 is in affirmative, who would be liable to pay the GST and what rate of GST would be applicable on the value of supply determined under question 2 above?*

5.1) The applicant has further submitted that as per their understanding, they are in the business of software development and staff augmentation service which is their business activity in terms of the definition of business in the section 2(17) of the CGST Act. Arrangement of transport facility to their employees and making payment to the third party vendor for arranging such facility is definitely not an activity which is incidental or ancillary to the activity of developing software, nor can it be called an activity done in the course of or in furtherance of development of software. The applicant further submitted that the Central Board of Indirect Taxes and Customs, vide press release dated 10.07.2017, has clarified that any supply by the employer to employee in terms of contractual agreement entered into between both the parties shall not be subject to GST, provided the employer pays the tax on the facility so procured. Accordingly, the applicant has concluded that the activity of arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service.

5.2) The applicant also paid reliance on the Advance Ruling pronounced by the Maharashtra Authority for Advance Ruling in the case of M/s. Posco India Pune Processing Center Private Limited and in the case of M/s Jotun India Pvt. Ltd, to vindicate their stand.

5.3). As regard to the valuation of the service, the applicant has submitted that in the absence of any machinery provision for the valuation of the activity under consideration and in terms of the press release enumerated above, the activity under consideration is not a supply and accordingly, the value of the transport facility arranged by the applicant, under the terms of employment contract, through the third party vendor shall be nil.

5.4) As regard to the service classification of the activity, the applicant has

submitted that, if the activity is treated as 'supply of service' then it is not clear that under which service classification would the activity fall.

5.5) With reference to the person liable to pay the GST and applicable rate, the applicant has submitted that the value of the activity of providing transport facility to its employees under contractual obligation, with reference to the payment of GST, would be Nil and accordingly, there will be no GST liability on the said amount.

6). The applicant was granted a virtual hearing on 26.06.2020 through video conferencing. Shri Rakesh Nanda, Chartered Accountant/ Authorized representative of the applicant attended the virtual hearing.

During the hearing, the authorized representative reiterated the submissions already made vide application dated 22.01.2020 and also submitted sample copies of invoice, issued by various tour operators to the applicant, through email.

7). The application for advance ruling was forwarded to the Jurisdictional GST Officer (Assistant Commissioner, CGST & CEX, Division-1, Noida) to offer his comments/views/verification report on the matter. However, no reply was received despite of repeated reminders. Accordingly, it is deemed that they are in agreement with the applicant and no proceeding, is neither pending nor decided, against the applicant on the question raised in the advance ruling application.

DISCUSSION AND FINDING

8). *At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.*

9). *We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(g) of the CGST Act 2017 being a matter related to 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. We therefore, admit the application for consideration on merits.*

10). We observe that the questions sought by the applicant are-

- i. Whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be construed as "Supply of service" by the company to its employees?
- ii. If the answer to above question is in affirmative, how the value of subsidized shared transport facility provided to employees under employment contract, will be determined by the applicant?
- iii. If the answer to question 1 is in affirmative, under which service classification, the activity of arranging transport facility for employees, would fall?
- iv. If the answer to question 1 is in affirmative, who would be liable to pay the GST and what rate of GST would be applicable on the value of supply determined under question 2 above?

11). The first question before us to decide is to whether the subsidized shared transport facility provided by the applicant to its employees, in terms of employment contract, is a "Supply of service" by the applicant to its employees.

12). In this regard, we observe that Section 7(1) of the CGST Act 2017 defines the term "Supply" as:

" 7. (1) For the purpose 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;
- b) import of services for a consideration whether or not in the course or furtherance of business; and,;
- c) the activities specified in Schedule I, made or agreed to be made without a consideration;
- d) the activities to be treated as supply of goods or supply of service as referred to in Schedule II.

13). Further, as per "Schedule II" , as referred in the Section 7 of the CGST Act, 2017, the following activities to be treated as supply of goods or supply of service:-

"1. Transfer:-

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building :-

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process :- Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets:-

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services :-

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply:- The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods :- The following shall be treated as supply of goods, namely:— Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

14). The term "Service" is defined, as per Sub-Section (102) of Section 2 of the CGST Act 2017, as:

"Service means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged."

15). Here, we observe that while defining the term "Supply", emphasis has been made upon the term *"in the course or furtherance of business"*.

Further, the term 'Business' has been defined under section 2(17) of the CGST Act, 2017, as below:

"(17) "business" includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- (f) admission, for a consideration, of persons to any premises;*
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and*
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;"*.

16). From the details/documents provided by the party, we observe that the applicant is transferring the entire amount collected from their employees, to the third party vendor who is providing transport services to their employees. We also observe that the applicant, in his application, has informed that apart from subsidized amount collected from the employees, they are also adding up a considerable amount into it and then paying it to the third party vendor. The applicant is not retaining any amount collected from the employees towards said transportation charges. We further observe that the applicant is in the business of software development and staff augmentation services and not in the business of providing transport service. Rather, this is a facility provided to their employees under the obligation of Law of the Land. Moreover, this activity is not integrally connected to the functioning of their business. Also, the said activity is not a factor which will take their business activity forward. Accordingly, we are of the opinion that providing transport facility to its employees cannot said to be in furtherance of business.

17). We also observe that the Maharashtra Authority for Advance Ruling ('AAR'), in case of M/s. Posco India Pune Processing Center Private Limited', vide Order No. GST-ARA-36/2018-19/B-110 Mumbai, dated 07.09.2018 has ruled that:

"There is no way that the 50% amount recovered can be treated as amount received for service rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Such recovery of 50% premium amounts by the applicant from their employees cannot be supply of service under the GST laws".

Observing this, the Authority has ruled that:

"The recovery of Parents Health Insurance expenses from employee does not amount to "supply of Service" under the GST Law...."

18). We also observe that this authority has previously, in the case of M/s Ion Trading India Private limited, ruled that the amount recovered from the employees towards parental insurance premium payable to the insurance company would not be deemed as "Supply of service" by the applicant to its employees. Moreover, we also observe that the CBIC, in its press release dated 10.07.2017, has clarified that "the supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subject to GST. In this regard, we observe that the applicant has submitted the copies of appointment letters wherein the terms and conditions for availing the facility has been specified.

18). From the aforesaid discussions, we observe that arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business. Providing transport facility to employees is no where connected with the business of the applicant.

19). Accordingly, we are in unison with the applicant that arranging the transport facility for the employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

20). Further, coming to the subsequent questions, we observe that the subsequent questions in the application apply only when the answer of first question is in affirmative. As we are of the view that arranging transport facility to its employee is not a supply of service, accordingly the remaining questions become redundant and merit no discussion.

20). In view of the above discussions, we, both the members unanimously rule as under;

RULING

Question 1- Whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be construed as "Supply of service" by the company to its employees?

Ans: Answered in negative.

Question 2- If the answer to above question is in affirmative, how the value of subsidized shared transport facility provided to employees under employment contract, will be determined by the applicant?

Ans: As the answer to first question is in negative hence the question becomes redundant.

Question 3- If the answer to question 1 is in affirmative, under which service classification, the activity of arranging transport facility for employees, would fall?

Ans: As the answer to first question is in negative hence the question becomes redundant.

Question 4- If the answer to question 1 is in affirmative, who would be liable to pay the GST and what rate of GST would be applicable on the value of supply determined under question 2 above?

Ans: As the answer to first question is in negative hence the question becomes redundant.

21). This ruling is valid, only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Ajay Kumar Misra)

Member of Authority for Advance
Ruling


(Dinesh Kumar Verma)

Member of Authority for Advance
Ruling

To,

M/s North Shore Technologies Private Limited,
1st Floor, Tower B, Plot No.-5,
Logix Techno Park, Sector-127,
Noida, Gautam Buddha Nagar,
Uttar Pradesh- 201 301

AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 59

Date: 29-06-2020

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CX, Noida-I, C-56/42, Sector-62, Noida, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-I, Noida, C-56/42, Renu Tower, Sector-62, Noida, Uttar Pradesh- 201 307;
5. Through the Additional Commissioner, Commercial Tax, Noida, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.

