THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING

FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/AM-RM/01/2021-22 **Date-** 21.12.2021

BEFORE THE BENCH OF

(1) Shri Ashok Kumar Mehta, MEMBER

(2) Shri Rajeev Kumar Mital, MEMBER

Name of the Appellant:	Cummins India Limited
Registered Address:	Cummins India Office Campus, Tower A, 5th floor, Survey No. 21, Balewadi, Pune – 411045
GSTIN Number	27AAACC7258B1ZW
Date of Personal Hearing:	27.10.2021
Present for the Appellant:	Shri Rohit Jain, Advocate Shri Vivek Baj, C.A. Shri Deepak Bahirwani, Tax Director
Details of appeal	Appeal No. MAH/GST-AAAR-33/2018-19 dated 05.03.2019 against Advance Ruling No. GST-ARA-66/2018-19/B-162 dated 19.12.2018
Jurisdictional Officer	Asstt./Dy. Commissioner, Range -I, Division-V, CGST, Pune -II Commissionerate

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017, and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act" and "the MGST Act"] by M/s. Cummins India Limited (hereinafter referred to as "**the Appellant**") against the Advance Ruling No. GST-ARA-66/2018-19/B-162 dated 19.12.2018 passed by the Maharashtra Authority for Advance Ruling (hereinafter referred to as the "**MAAR**").

BRIEF FACTS OF THE CASE

1. The Appellant, i.e., M/s. Cummins India Ltd., are engaged in manufacture and sale of a variety of diesel engines, parts thereof, and related services, and undertake all day-to-day activities required therefore. The Appellant are duly registered under the Central Goods and Services Tax Act, 2017 ("**CGST Act**") and Maharashtra Goods and Services Tax Act, 2017 ("**MGST Act**") bearing GSTIN **27AAACC7258B1ZW**.

2. Post-implementation of GST, the Appellant had analyzed all its business activities and day-to-day operations to ascertain levy of GST and necessary compliance under GST legislature. However, there appeared ambiguity in few of the activities of Appellant vis-à-vis interpretation of GST legislation. Thus, the Appellant had preferred an application to seek a Ruling relating to the following issues:

   i. **Classification of Engine manufactured by Appellant**

   ii. **Levy of GST on facilitation of common input services, necessity of registering as an 'Input Service Distributor' ('ISD') and determination of assessable value.**

3. The Present Appeal, however, is limited to the Ruling in relation to necessity of obtaining registration as an ISD, determination of assessable value for facilitation of common input services, based on facts and submissions referred in the ensuing paragraphs.

4. The Appellant has its presence across various states in India through its manufacturing/service/sales units. These units are located in different states of India. Therefore, in view of Section 25(4) of the CGST Act, 2017, units located in each such state are to be treated as a 'distinct person' from units located in other states ("**distinct persons**"). Accordingly, each such distinct person is duly registered under the Central Goods and Service Tax Act, 2017 ("**CGST Act**").

5. The Appellant, being a registered person and engaged in the activity of making taxable supply, are eligible to avail Input Tax Credit ("**ITC**") of GST paid on all the input, capital goods and input services procured in the course or furtherance of business.

6. Amongst all such procurements, certain common input services are availed by head office of the Appellant located in Pune. Further, the units of the Appellant may also avail common services. Accordingly, the head office or the respective units, as the case may be, avail ITC of the GST paid on such common input supplies subject to provisions of Section 17 of the CGST Act, 2017.

7. The costs incurred by head office/units for procurement of such common input services, is booked by such unit/head office in its own books of accounts. Such cost is then allocated, and recovered proportionately from each of the recipient units to determine the office/plant-wise profitability, which is an internal procedure.

8. Based on these facts, the Appellant herein sought for a Ruling with respect to the following questions:

i. *Whether availment of input tax credit of tax on common input supplies on behalf of other unit/units registered as distinct person, and further allocation of the cost incurred for same to such other units, qualifies as supply and attracts levy of GST?*

ii. *If GST is leviable, whether assessable value can be determined by arriving at nominal value?*

iii. *Once GST is levied and ITC thereof is availed by recipient unit, whether the Applicant is required to register itself as an Input Service Distributor for distribution of ITC on common input supplies?*

9. **RULING PASSED BY 'AUTHORITY FOR ADVANCE RULING'**

i. Availment of input tax credit on common input supplies on behalf of other unit / units registered as distinct person qualifies as supply and attracts GST.

ii. Assessable value shall be arrived in terms of Rule 30 of the CGST Rules, 2017 (i.e. 110% of the cost of provision of such services).

iii. The Appellant is required to obtain registration as ISD.

10. The Appellant, being aggrieved by the part of the impugned Ruling passed by the Maharashtra Authority for Advance Ruling, have preferred the present Appeal before the Maharashtra Appellate Authority for Advance Ruling (hereinafter referred to as **"the MAAAR"**).

GROUNDS OF APPEAL

11. The grounds, mentioned by the Appellant in their Appeal memorandum, are as under:

i. Impugned Order has failed to clarify the inapplicability of GST relating to functions of an employee from one distinct unit for another distinct unit, which cannot be treated as a supply in as much as services of an employee are excluded from the definition of Supply under Schedule III of the CGST Act;

ii. The necessity for Appellant to determine the assessable value based on 110% of the cost of provision deviates from the applicable statutory provisions;

iii. Even though registering as an ISD is an option provided to an assessee, the impugned ruling imposes compulsion on Appellant to obtain registration as an ISD;

iv. Impugned Order is silent on the additional submissions made by the Appellant which has a close nexus with the clarification sought; the Impugned Order thus suffers from violation of principles of natural justice.

12. The Appellant have further elaborated the aforementioned grounds as under:

12.1 THE FACILITY OF REGISTERING AS AN ISD IS AN OPTION PROVIDED BY THE STATUTE AND THERE IS NO COMPULSION FOR A TAXABLE PERSON TO REGISTER ITSELF AS AN ISD:

(a) The Impugned Ruling has invoked the provision of Section 24 of the CGST Act, 2017 to compel the Appellant to obtain registration as an ISD. Relevant portion of the Ruling is reproduced below:

ISD is a facility available to persons/businesses having a large share of common expenditure and where billing/payment is done from a centralized location. The concept of ISD has been introduced to simplify the credit taking process for various assessees/businesses, etc. and the facility helps the concerned to have a smooth flow of input tax credit under GST.

We refer to provision of Section 24 (viii) of the CGST Act which is as under:-

Compulsory registration in certain cases- *Notwithstanding anything contained in sub-section (1) of Section 22, the following categories of persons shall be required to be registered under this Act.,-*

(viii) Input Service Distributor, whether or not separately registered under this Act.

We have no doubt that the applicant wants to distribute common CENVAT credit received by the HO for which payments/billings are done by them. If they want to distribute such credit then they will be an Input Service Distributor. Once an ISD, then it follows that they must compulsorily obtain separate registration as an ISD. Hence, we do not agree with the applicant's contention that the provisions of Section 24 (viii) of the CGST Act merely refers to the necessity of an independent registration if a person intends to avail the facility of ISD and does not create any stipulation as to necessity of availing the ISD facility itself.

(b) It has been submitted by the Appellant that Section 24 merely refers to the necessity of an independent registration, if a person intends to avail the facility of ISD. The concept of ISD in GST regime is defined under Section 2(61) of the CGST Act. The relevant definition has been reproduced below for easy reference:

"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services ***and issues a prescribed document for the purposes of distributing the credit*** *of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;"*

(c) Referring to the above definition, the Appellant has submitted that an ISD under GST regime is an office meant to receive tax invoice towards receipt of input services and further distribute the credit to the supplier units (having the same PAN) proportionately, i.e., distinct persons, by issuing prescribed documents. As such, when the input supplies are being received by a unit on behalf of distinct persons, the ISD mechanism enables it to pass on the ITC to the unit which has actually consumed such services, and such credit can only be passed based on a prescribed document. In a nutshell, a unit can be treated as an ISD only if it issues the prescribed document to distribute the ITC.

(d) The definition, however, does not create any stipulation as to necessity of availing the ISD facility itself. Further, there exists no other statutory provision which compels a person to act as an ISD. In such a case issuance of prescribed document and thereby to opt for the mechanism of ISD, appear to be an 'option' to be exercised at the discretion of registered person.

(e) In these circumstances, the compulsory registration as provided under Section 24 becomes applicable only if the Appellant intends to issue the prescribed document to distribute the ITC, and thereby, function as an ISD. As a corollary, where the Appellant opts not to issue the prescribed document to distribute the credit, the Appellant is not required to register itself as an ISD.

(f) In view of the above, the Appellant has submitted that registering as an ISD is an option provided to an assessee. Accordingly, if any assessee opts not to utilise the facility of ISD, it is not required to register as an ISD. The Appellant has elaborately put forth these submissions before Ld. Authorities, however the Impugned Ruling has completely ignored the discretion provided at the hands of an assessee, and has instead assumed Appellant's willingness to distribute ITC received by head office on common input services.

(g) The Appellant submits that it has nowhere deposed or expressed its willingness to operate as an ISD to distribute the ITC of common input services. The Appellant has merely sought for a clarification to ascertain if it is required to obtain registration as an ISD even though its head office discharges the obligation to pay GST on 'supply' of facilitating common input services to distinct units. The Impugned Ruling is therefore misplaced on facts.

(h) The Appellant further submits that, the Ld. Authority for Advance Ruling itself have Ruled that an availment of common input service by head office on behalf of distinct units qualifies as 'supply' and attracts levy of GST; such a mechanism is also in line with the intent of GST to levy consumption-based tax. In such a case, the same availment of common input services at the hands of head office cannot be subjected to distribution of ITC through ISD mechanism. The necessity to levy GST on availment of common input services on behalf of distinct units as well as treating the same for distribution of ITC through ISD would lead to anomality of interpretation, and result in a ruling that is practically infeasible to implement. Such a ruling defeats the very purpose of seeking clarity on the question raised by the Appellant, and is therefore unsustainable in law.

(i) The Appellant has also submitted that while the Impugned Ruling has recorded its findings relating to necessity of registering as an ISD, it has at the same time mentioned that ISD is a facility that is available for persons / businesses. That being so, it cannot be said that such facility is a necessity. Also, the Impugned Ruling has nowhere clarified as to why the same needs to be followed despite the mechanism to treat transaction between distinct persons as 'supply', and levy GST thereon. It has also been submitted by the Appellant that while the Ruling itself has treated availment of common input services on behalf of other distinct units to be a supply on which GST is required to be levied, the necessity of obtaining ISD becomes redundant. In such a case it is only just and reasonable to treat the mechanism of ISD to be an option available at the hands of Appellant and the Appellant has the right to exercise its discretion to either opt or refrain from availing the ISD mechanism. Accordingly, it has been contended by the Appellant that it is the discretion of Appellant to determine if it intends to distribute the ITC of common input services, and that, it is required to obtain registration as an ISD only if it intends to distribute ITC of common input service.

12.2 <u>IMPUGNED ORDER HAS FAILED TO CLARIFY INAPPLICABILITY OF GST ON FUNCTIONS PERFORMED BY AN EMPLOYEE FROM ONE DISTINCT UNIT FOR ANOTHER DISTINCT UNIT;</u>

(a) The Impugned order has Ruled that supply made between distinct persons of the Appellant qualifies as 'supply' even in absence of any consideration and therefore Appellant is required to levy GST thereon. The necessity to pay GST on every function performed between distinct persons may also cover in its fold the functions performed by an employee from one distinct unit for another distinct unit.

(b) In this regard, the Appellant has submitted that even though employees of the Appellant at one distinct unit provide assistance to other distinct units of the Appellant, the employees are essentially performing functions for the same legal entity. It is settled law that legal relationship of employment is between employee and the Company as a whole encompassing all its establishments. This position of law is also evident from the fact that in case of closure of any manufacturing unit, the right to emoluments/compensation of employees working in such unit survives and the obligation of legal entity to perform its duties as the employer continues. Accordingly, functions performed by the employee from one distinct unit for another distinct unit continue to be covered by the employer - employee relationship, which is explicitly excluded from the levy of GST vide entry no. 1 of Schedule – III to the CGST Act.

(c) The Appellant has elaborated the position of law as expounded above *vide* its additional submissions dated November 29, 2018 and December 12, 2018 so as to attain clarity as to inapplicability of GST on the cost of employees as may be recovered by one distinct unit from another distinct unit. However, the impugned Order is completely silent on the stated submissions. It is, therefore, contended by the Appellant that the cost of employee's salary as may be recovered by one distinct unit from another distinct unit may be excluded from the levy of GST.

12.3 <u>DETERMINATION OF ASSESSABLE VALUE BASED ON 110% OF COST OF PROVISION OF SERVICE IS UNSUSTAINABLE IN LAW:</u>

(a) The Appellant has contended that since each of Appellant's unit is registered independently, and is treated as a 'distinct person' in view of provisions of Section 25(4) of the CGST Act, value of supply made between such distinct person is required to be assessed in view of Rule 28 of the Central Goods and Service Tax Rules, 2017 ("**CGST Rules**"). Relevant portion of Rule 28 is extracted below for ready reference:

"28. *Value of supply of goods or services or both between distinct or related persons, other than through an agent-*

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

a. *be the **open market value** of such supply;*

b. *if the open market value is not available, be the value of supply of goods or services of **like kind and quality**;*

c. *if the value is not determinable under clause (a) or (b), be the value as determined by the application of **Rule 30 or Rule 31**, in that order:*

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

(b) On a bare perusal of Rule 28, it has been submitted that value of supply between distinct persons needs to be determined based on either of the following mechanism which are mentioned in its order of priority:

a. Open Market Value

b. Value of supply of like kind and quality

c. Value as determined by application of Rule 30 or Rule 31

- Rule 30 prescribes for value of supply of goods or services or both based on cost of production or manufacture

- Rule 31 prescribes residual method of referring to reasonable means consistent with Section 15 and provisions of CGST Rules, 2017

(c) The Appellant has referred to the second proviso appended to Rule 28 which provides deeming fiction for acceptance of invoice value as an open market value. Accordingly, the Appellant has submitted that where the recipient unit is eligible to avail ITC of the tax charged, then value, as may have been declared on the invoice, is to be treated as open market value for the purpose of Rule 28. It is to be noted that the term value as referred to in the proviso is not qualified by any adjective which means that, **as long as the recipient unit is eligible to avail ITC**, no other condition needs to be satisfied under Rule 28 to treat any value declared on the invoice as an 'open market value'.

(d) In view of the deeming fiction so provided under second proviso to Rule 28, the Appellant has submitted that all the units of Appellant registered as distinct units are engaged in providing taxable supplies, and are eligible to avail ITC of the input supplies. In such a case, where the supplier unit supplies the services of facilitating common input services on behalf of other recipient units, the value of such facilitation service can be determined based on the deeming fiction as provided under second proviso to Rule 28. Accordingly, any nominal value assigned to such supply of facilitation is deemed to be accepted as open market value and payment of GST thereon would be treated as sufficient compliance with the obligation to discharge GST liability.

(e) It is further contended by the Appellant that the Impugned Ruling has failed to take into cognizance the applicability of second proviso to Rule 28, and has invoked the provisions of Rule 30 to determine the assessable value based on 110% of the cost of provision of Service. As a matter of fact, the impugned Order is completely silent on the additional submission of the Appellant in support of Applicability of Rule 28. Relevant portion of the Ruling is reproduced below:

Rule 30 prescribes for value of supply of goods or services or both based on cost of production or manufacture. The applicant has submitted that they are engaged in manufacture, sale of a variety of diesel engine, parts thereof, and related services, and undertakes all day-to-day activities required, therefore. Thus, they have available the cost of production of such goods, and therefore, it would be prudent for them to arrive at a value which is 110% of the cost of production. Hence, we find Rule 30 is very much applicable in the applicant's case.

(f) The Appellant submits that based on Second proviso to clause (c) of Rule 28 of the CGST Rules, 2017, they can determine the assessable value in compliance with the statutory framework in as much as all the recipient distinct units of the Appellant are eligible to avail ITC of the GST to be charged by Appellant. In view of the above, it is contended by the Appellant that any nominal value, as may be declared on the invoice, can be treated as assessable value for the purpose of complying with the obligation to discharge GST liability.

12.4 IMPUGNED ORDER BEING SILENT ON ADDITIONAL SUBMISSIONS WHICH HAS A CLOSE NEXUS WITH THE CLARIFICATION SOUGHT, SUFFERS FROM VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

(a) The Appellant, *vide* its additional submissions dated November 29, 2018 and December 12, 2018, elaborated following salient grounds in support of the clarification sought by it:

i. An ISD is an office which receives the invoices and issues a prescribed document for distribution of credit. Accordingly, if such document is not issued by Appellant, it does not qualify as an ISD, and thus, is also not mandated to register itself as an ISD;

ii. Functions of an employee from one distinct unit for another distinct unit cannot be treated as a supply inasmuch as services of an employee are excluded from the definition of Supply under Schedule III of the CGST Act;

iii. If head office of Appellant raises invoice and charges GST to its distinct unit for availing common input services on its behalf, then it is not required to register as an ISD to distribute the ITC;

iv. In view of Rule 28, if Appellant's distinct unit is eligible to avail ITC, any value as may be declared by Appellant on its invoice raised on such distinct unit would be deemed as open market value.

(b) It is submitted that the additional submissions referred above indeed support the submissions relating to clarification sought by Appellant from the Authorities. However, the Authorities have, instead of scrutinising/analysing these submissions, chosen to remain silent on the same throughout the impugned Order. It is further submitted that, absence of any material findings relating to additional submissions made by the Appellant which can potentially support the clarification as sought for by the Appellant in the present case, renders the Impugned Ruling non-speaking of the issue relevant to the present case, and is therefore, liable to be modified on this ground alone. Reliance in this regard is placed on the decision of Hon'ble High Court in the case of ***Anil Products Limited vs CCE*** [2010 (257) ELT 523 (Guj.)] wherein Hon'ble High Court quashed the Tribunal's decision which was devoid of specific findings on submissions made, judgments relied upon, and the distinguishing features pointed out by the appellant therein. Relevant portion of the decision is reproduced below:

"We are of the opinion that the sole reliance placed by the Tribunal in the decision of Shanpur Industries (supra) is not justified and the Tribunal ought to have given its specific findings on the various *submissions made, judgments relied upon and the distinguishing features pointed out by the appellant before the Tribunal."*

(c) The position of law expounded above has time and again been upheld in a catena of decisions referred below:

- ***Micro Stretch Elastomers Private Limited vs CCE [2001 (134) ELT 477 (Tri-Chennai)]***
- ***Penguin Electronics(P) Limited vs CCE [2005 (185) ELT 194 (Tri-Mum)]***
- ***B Limited vs. Commissioner of Central Excise, Chandigarh-I [2002 (149) ELT 116 (Tri. - Del.)].***

DEPARTMENT'S SUBMISSIONS DATED 04.06.2019

13. The Department, vide the letter dated 04.06.02019, has made the following submissions:

(i) That if the Appellant is eligible and desires to perform as Input Service Distributor based on their business model, then it is mandatory to obtain registration in terms of Section 24(viii) of the CGST Act, 2017;

(ii) That the Appellant themselves have submitted that the impugned supply of facilitation services is specific to the business model of the Appellant, and the same is not supplied in the open market so as to have open market value of the impugned supply, and that for the same reason the value of the impugned transaction can also not be referenced to the value of supply of 'same kind and quality', therefore, the Department has contended that valuation of the impugned supply cannot be done in terms of Rule 28, rather the same can be done by referring to the Rule 30, which provides that value of such supply shall be 110% of the cost of provision of such supply.

(iii) That functions/services performed by the employee of one distinct unit for another distinct unit are not covered by the employer-employee relationship, and hence the same taxable under GST.

PERSONAL HEARING

14. A personal hearing in the matter was held on 27.10 2021, which was attended by Shri Rohit Jain, Advocate, Shri Vivek Baj, C.A., and Shri Deepak Bahirwani, Tax Director, as representatives of the Appellant. The Jurisdictional Officer in the matter was not present during the said personal hearing.

15. During the course of the said personal hearing, the representatives of the Appellant filed a supplementary submission which inter-alia includes sample invoices of common input services on which ITC has been availed by the Appellant, sample invoice for cross charge between distinctly registered entities, Input Tax Credit register & GSTR-3B of distinct persons evidencing availment of ITC of GST charged on the invoice of cross charge along with compilation of case laws relied upon by them. They also reiterated their earlier submissions made in the appeal memorandum. They further requested to file an additional submission by 02.11.2021 in response to our queries as to some of the

submissions made by the Appellant during the personal hearing were not part of the original Advance Ruling Application.

ADDITIONAL SUBMISSIONS DATED 02.11.2021

16. The Appellant vide their additional submissions dated 02.11.2021 have stated that all the submissions, which are being made in the said personal hearing before the Bench of the Appellate Authority for Advance Ruling, have also been made before the Advance Ruling Authority vide various submissions made at the different point of times. They further deposed that the submissions regarding valuation of the impugned transaction pertaining to the facilitation services in terms of the second proviso to clause (c) of Rule 28 of the CGST Rules, 2017 as well as their contention in respect of the obtaining the ISD registration for the Head Office in as much as obtaining registration for ISD should not be compulsion for such offices/units which intend to avail the ITC for the GST paid on procurement of the common input services on behalf of other units, have been specifically made vide their letter dated **12.12.2018** filed before the Maharashtra Advance Ruling Authority. The copy of the additional submissions dated **12.12.2018** has been annexed as Exhibit- III to the Appeal memorandum filed before the Appellate Authority.

Discussions and Finding

17. We have gone through the entire case records including all the written as well as oral submissions made by the Appellant at different point of times. We have also examined the impugned Advance Ruling Order dated 19.12.2018 passed by the Maharashtra Advance Ruling Authority. On careful consideration of the same, the moot issues, before us, are as under:

(i) Whether the Appellant's activities of providing facilitation services to their branch offices/units by way of availment/procurement of common input services from third party vendors on behalf of their branch offices/units, wherein the tax invoices for the common input services were raised in the name of the Appellant's Head Office and expenses for the same were incurred by the Head Office itself, and subsequently the entire expenses incurred by it including the total cost of the common input services and the other administrative expenses like employee salary cost, etc., were allocated, will be

considered as supply or otherwise and whether the same would attract GST or not.

(ii) Whether they are eligible to utilize the credit of tax paid for the common input services received on behalf of its branch offices/units.

(iii) Whether they have to be compulsorily registered as an ISD in accordance with Section 24(viii) of the CGST Act, 2017, under the circumstances as detailed above.

(iv) What will be the valuation of the services provided by the Head Office to its branch offices/units, and whether the allocation of the cost of the employees' salary by the Head Office/Corporate Office to the branch offices would attract levy of GST.

18. To decide the first issue, firstly, we will examine the scope of supply provided under Section 7(1) of the CGST Act, 2017, the relevant portion of which has been reproduced herein under:

(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;.....

(b) .....

(c) activities specified in schedule I, made or agreed to be made without consideration:

Further Schedule I to the CGST Act, 2017 has been reproduced herein under:

1. .....

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in course or furtherance of business:

.....

Now, we will comprehend the meaning of ***services*** as provided in the Section 2(102) of the CGST Act, 2017, which is being reproduced herein under:

"services" 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;

19. Thus, the GST Law has provided a very wide connotation for services, which will cover any activity other than those, which involves goods, money and securities. In view of this wide scope and coverage of the term "services", it is adequately evident that the impugned activities of providing facilitation services to their branch offices/units by way of availment of the common input services by the Appellant' Head office on behalf of its Branch Offices/Units would be covered under services, and hence, supply in terms of section 7(1) (a) of the CGST Act, 2017 as the said services are provided by the Appellant' Head Office to its branch offices/units for a consideration in the course of its business.

20. Now, coming to the moot issue no. (ii), i.e., Whether the Appellant's Head Office is eligible to utilize the credit of the tax paid for the common input services received on behalf of its branch offices/units, first we will examine the eligibility and conditions for taking input tax credit as prescribed under Section 16 of the CGST Act, 2017, which is being reproduced herein under:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of business and the said amount shall be credited to the electronic credit ledger of such person.

21. Thus, on bare perusal of the above provision, it is revealed that any registered person is entitled to take credit of input tax charged on any supply of goods or services or both, subject to the condition that the goods or services or both received by the registered person should be used or intended to be used in the course or furtherance of business.

22. However, in the instant case, it is observed that the common input services received by the Appellant's Head Office are being used or consumed by the Branch Office/Units in the course or furtherance of their business, and not by the Head Office, as the Head Office receives these common input services on behalf of the Branch Offices/Units.

"Hence, basis the above discussion, it can clearly be inferred that the Head Office is not entitled to avail and utilize the credit of tax paid on the common input services received by it on behalf of the branch offices/units."

23. Now, coming to the moot issue no. (iii), i.e., whether they have to be compulsorily registered as an ISD in accordance with Section 24(viii) of the CGST Act, 2017 under the circumstances as detailed above, we will first examine the relevant provision of Section 24(viii) of the CGST Act, 2017, which is being reproduced herein under:

24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

(i)……

(ii)……

……

(viii) Input Service Distributor, whether or not separately registered under this Act;

……

24. On perusal of the above provision, it is revealed that all the Input Service Distributors, whether separately registered under this act or not, are to be registered compulsorily as ISD. Thus, the law is very clear in this regard that any Input Service Distributor, which intends to distribute the credit of the tax paid on the common input services received by it on behalf of its branches/units, has to mandatorily register itself as an ISD, and is bound to comply with the provisions and rules made in relation thereto.

25. In the instant case, there is no doubt regarding the Appellant's Head Office as being in the nature of the Input Service Distributor as per the stipulations prescribed in the definition of the Input Service Distributor provided in the Section 2(61) of the CGST Act, 2017, which is being reproduced herein under:

Section 2(61) ***"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;***

26. It has been submitted by the Appellant that the Head office receives tax invoices towards the receipt of common input services on behalf of its branch

offices/units. Therefore, the sole and essential condition for the Input Service Distributor has been squarely fulfilled. The main contention of the Appellant as to, the Appellant, in this case, the Head office, does not intend to issue prescribed documents as envisaged in the definition of the ISD, and hence need not be registered as an ISD, it is opined that the issuance of the prescribed documents by an ISD is the way or method for the distribution of the Input Tax Credit, which needs to be adhered to by an ISD, if it intends to distribute the Input Tax Credit of the GST paid on the common input services, as envisaged under the provisions laid under the GST Act.

27. In this regard, the Appellant have contended that since they do not intend to issue any prescribed document for the distribution of ITC, they do not require to take the ISD registration, as the Head office themselves intend to avail the ITC of the tax paid on common input services received on behalf of the branch offices/units, and utilize the same for setting off their liability as a normal supplier which would arise as a result of the impugned facilitation services provided by them by way of arranging, and availing common input services on behalf of their branch offices/units.

28. In this regard, it is opined that the Appellant are not entitled to avail or utilize the credit of tax paid on the common input services received by them on behalf of their branch offices/units as the said common input services are used or consumed by the branch offices/units, and not by the Head Office. Thus, the aforesaid contention, put forth by the Appellant wherein they have argued that the Head Office itself will be availing and utilizing the credit of tax paid by it on the said common input services for setting off its own GST liability which would eventually arise on account of providing the said facilitation services to its Branch Offices/Units, does not hold water, and hence not tenable. It is further stated that the ISD is the only option available to the Appellant to pass on the credit of tax paid by the Head Office on the availment of the common input services received from the third -party vendors on behalf of their Branch Offices/Units.

29. The Appellant have further contended vide their additional submissions dated 12.06.2019, that the holding of normal supplier's registration as well as ISD registration will lead to the anomalies, and will have unjust and dreadful GST impact on their taxation. They have depicted this situation by an illustration

with hypothetical transactional flow, wherein in the first model when they are operating with only normal supplier registration, i.e., without being registered as ISD, they have assumed the cost of common input services to the tune of Rs. 80,000/-, on which they are liable to pay GST to the tune of Rs.14,400/-. Further, they have assumed the cost of employee's salary to the tune of Rs. 20,000/-, thereby, making the total cost of supply/taxable value of the impugned supply of facilitation services to Rs. 100,000 (Rs. 80,000(assumed cost of common input services) + Rs. 20,000/- (assumed cost of employee salary)) whereon the Appellant have calculated the total GST impact to the tune of Rs. 18,000/- at the rate of 18%.

30. In the second scenario, where they are operating with both the supplier's registration as well as with an ISD registration, they have exhibited the GST impact of Rs. 32,400(GST of Rs. 18000 calculated as above on the total value of the facilitation services supplied by them to their branch offices/units + GST of Rs. 14,400 paid by the Appellant to the third- party vendors for procuring the common input services on behalf of their branch offices/units), and thereby, have contended that the dual registration will lead to the anomalies which would result in adverse impact on their GST obligation, and on their business overall. They have argued that they have to incur an additional GST of Rs. 14,400/- while operating with both the registrations, i.e., the normal supplier registration along with the ISD registration.

31. In this regard, it is observed that the aforesaid contention put forth by the Appellant, wherein they have argued that they will have to incur an additional GST to the tune of Rs. 14,400/- in case where their Head office is bound to operate with the dual registrations, i.e., normal supplier registration along with the ISD registration, is erroneous and specious in as much as the Appellant's Head Office will be very much in a position to recover from their Branch Offices/Units the said GST amount of Rs. 14,400/-, paid by it to the third -party vendors for availment of common input services on behalf of the Branch Offices/Units, by way of exercising the ISD option available to it under the provisions of Section 2(61) of the CGST Act, 2017. Here, it is be mentioned that the said GST amount of Rs. 14,400/-, paid by the Head Office to the third -party vendors, would be recovered by the Appellant's Head Office in the

capacity of pure agent as provided under Rule 33 of the CGST Rules, 2017. which is being reproduced hereinunder:

Rule 33. Value of supply of services in case of pure agent. - *Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -*

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. *- For the purposes of this rule, the expression —pure agent means a person who-*

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

32. The Appellant, while expressing concerns over the adverse impact on their GST obligations, and on their business revenues overall, in case of obligations to operate with dual registrations, i.e., normal supplier's registration along with the ISD registration, have envisaged that while allocating the costs incurred by the Head Office for facilitating the Branch Offices/Units, the Head Office will have to charge from their Branch Offices/Units the GST on the cost of procurement of common input services received from the third – party vendors on behalf of the Branch Offices/Units. In this regard, it is opined that their Head Office is not bound to collect the GST on the said cost of procurement of the common input services as the Head Office is acting as a pure agent of the Branch Offices/Units in terms of explanation to Rule 33 of the CGST Rules, 2017 when it is procuring

the common input services from the third-party vendors on behalf of, and behest of the Branch Offices/Units, and accordingly, the said cost of the procurement of common input services from the third -party vendors would not be subject to GST in terms of Rule 33 of the CGST Rules, 2017.

33. It is, hereby, further clarified that under the mechanism of ISD, the Appellant's Head Office is eligible to pass on only such credit of tax paid on such common input services which it has procured from third -party vendors on behalf of the Branch Offices/Units, and not the credit of tax pertaining to such input services which have been exclusively used by the Head Office to provide the impugned facilitation services to the Branch Offices/Units.

34. Thus, on account of the provisions laid under Section 24(viii) of the CGST Act, 2017, it is conclusively inferred that any persons, which fulfills the condition of the ISD as provided under 2(61) of the CGST Act, 2017, and intends to distribute the credit of tax paid on account of the receipt of the common input services for its branches/units, will have to compulsorily register itself as an ISD, and it is immaterial whether the person is already holding other separate registrations under GST Act, or not.

35. Therefore, under the present facts and circumstances, it is imperative that the Appellant's Head Office, if it intends to distribute the credit of tax paid on account of the availment of common input services on behalf of the Branch Offices/Units, register themselves as an ISD apart from the normal supplier's registration.

36. Now, let us move on to discuss moot issue no. (iv), i.e., what will be the valuation of the services provided by the Head Office to its Branch Offices/Units, and whether the allocation of the cost of the employees' salary by the Head Office/Corporate Office to the branch offices would attract levy of GST. For the valuation part of this issue, we intend to examine the valuation rules governing the valuation of the transactions in different conditions and circumstances. For this we refer to Rule 28 of the CGST Rules, 2017, as emphasized by the Appellant, which is reproduced herein under:

"28. Value of supply of goods or services or both between distinct or related persons, other than through an agent-

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

a. *be the* ***open market value*** *of such supply;*

b. *if the open market value is not available, be the value of supply of goods or services of* ***like kind and quality****;*

c. *if the value is not determinable under clause (a) or (b), be the value as determined by the application of* ***Rule 30 or Rule 31****, in that order:*

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

37. In the instant case, it has been submitted by the Appellant that the open market value of the services as well as the value of the services of the same kind and quality is also not available, then in that situation the second proviso to clause (c) of the Rule 28 of the CGST Rules will apply as the recipient i.e. the branch offices/units of the Appellant is entitled for taking full input tax credit of the GST paid on the impugned facilitation services provided by the Head Office, in accordance with Section 16 of the CGST Act, 2017, as the said facilitation services from the Head Office are received by the branch office in the course or furtherance of business. Therefore, the value declared in the invoice shall be deemed to be the open market value of the services under question.

38. Further, the Appellant have contended that the allocation of the cost of the salary of the employees working for the Head Office will not qualify as supply, and hence will not attract levy of GST in terms of entry I of the Schedule III to the CGST Act, 2017. In this regard, the Appellant have contended that even though employees of the Appellant at one distinct unit provide assistance to other distinct units of the Appellant, the employees are essentially performing functions for the same legal entity. They have further contended that it is settled law that legal relationship of employment is between employee and the Company as a whole, encompassing all its establishments. This position of law is also evident from the fact that in case of closure of any manufacturing unit, the right to emoluments/compensation of employees working in such unit survives, and the obligation of legal entity to perform its duties as the employer continues. Accordingly, functions performed by the employee from one distinct unit for another distinct unit continue to be covered by the employer - employee relationship, which is explicitly excluded from the levy of GST vide entry no. I of Schedule – III to the CGST Act.

39. In this regard, it is evident that the employees of the Appellant's Head Office are working at behest of the Head Office, and not at behest of the Branch Offices/Units. Further, since the Head Office is using all its human resources to facilitate the operational requirements of the Branch Offices/Units by way of procuring common input services on behalf of the Branch Offices/Units, thereby, providing the impugned facilitation services, therefore, allocation and recovery of any amount including its employee's salary cost from the Branch Offices/Units will be subject to GST. The Appellant have further contended regarding inapplicability of GST on the allocation and recovery of the salary cost of the Head Office's employee from the Branch Offices/Units owing to the entry 1 of the Schedule III to the CGST Act, 2017, which stipulates as under: ***services by an employee to the employer in the course of or in relation to his employment shall neither be treated as supply of Goods nor supply of services.*** In this regard, it is opined that the above contention put forth by the Appellant is misplaced and erroneous in as much as the impugned transaction of facilitation services are not effected between the employees and the employer, but between the Head Office and Branch Offices/Units, which are distinct units in terms of Section 25(4) of the CGST Act, 2017, and the same is clearly taxable under GST in terms of Section 7 of the CGST Act, 2017. Hence the allocation and recovery of the salary of the employees of the Head Office from the Branch Office/Units will be subject to GST.

In view of the above discussions and findings, we pass the following order:

ORDER

40. We, hereby, partially modify the ruling passed by the Maharashtra Advance Ruling Authority vide Order No. GST-ARA-66/2018-19/B-162 dated 19.12.2018, and answer the questions, raised by the Appellant in their Appeal filed before us, as under:

i. ***Whether availment of common input supplies on behalf of other unit/units registered as distinct person and further allocation of the cost incurred for same to such other units qualifies as supply and attracts levy of GST?***

Yes, availment of common input supplies from the third-party service vendors/suppliers on behalf of the Branch Offices/Units, registered as distinct persons, will qualify as supply of services in accordance with the provision of Section 7(1)(a) of the CGST Act, 2017. However, the cost of the said common input services availed on behest of Branch Offices/Units and allocated to the Branch Offices/Units by the Head Office will not attract the levy of GST as the said costs have been incurred by the Head Office in the capacity of a pure agent of the Branch Offices/Units, and as such, the said cost incurred by the Head Office shall be excluded from the value of supply of the facilitation services.

ii. ***If GST is leviable, whether assessable value can be determined by arriving at nominal value?***

The assessable value of the services provided by the Head Office to the branch offices/units can be determined as per the the second proviso to clause(c) of Rule 28 of the CGST Rules, 2017, which provides that value of the tax invoice will be deemed as the open market value of the services.

iii. ***Once GST is levied and ITC thereof is availed by recipient unit, whether the Applicant is required to register itself as an Input Service Distributor for distribution of ITC on common input supplies?***

Since, the Head Office is not entitled to avail and utilize the credit of tax paid to the third-party service vendors for the common input services received by it on behalf of the Branch Offices/Units as the said common input services received by the Appellant's Head Office are being used or consumed by the Branch Offices/Units in the course or furtherance of their businesses, and not by the Head Office. Therefore, the Appellant is bound to take the ISD registration as mandated by section 24(viii) of the CGST Act, 2017, and comply with all the provisions made in this regard, if it intends to distribute the credit of tax paid on the common input services received by it, on behalf of the branch offices/units, to the branch offices/units.

21.12.21

(RAJEEV KUMAR MITAL)
MEMBER

(ASHOK KUMAR MEHTA)
MEMBER

Copy to- 1. The Appellant;

2. The AAR, Maharashtra;

3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai Zone;

4. The Commissioner of State Tax, Maharashtra;

5. The Jurisdictional Officer.