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Appellate Authority for Advance Ruling for Goods and Service Tax,

Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act,
2017)

Order No. 11/AAAR/16/03/20.20

Date: 16.03.2020

Before the Bench of:-

Shri Ajay Dixit, Member

Smt. Amrita Soni, Member

GSTIN Number	09AAECA4325R1Z9
Legal name of the Appellant	M/s Ion Trading India Private Limited
Trade Name of the Appellant	M/s Ion Trading India Private Limited
Registered address/Address provided while obtaining user ID	Building No. 2, Infospace, 4-6 th Floor, Block-B, Plot 2 Sector 62, Noida, Uttar Pradesh
Order of Advance Ruling Against which the appeal is filed	Order No. 42 dated 27.09.2019 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s. Ion Trading India Private Limited, Building No. 2, Infospace, 4-6th Floor, Block-B, Plot 2 Sector 62, Noida, Uttar Pradesh (hereinafter referred to as the “appellant”) against the Advance Ruling Order No. 42 dated 27.09.2019 issued by the Authority for Advance Ruling, Uttar Pradesh.

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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017.

Brief Facts of the Case

1) M/s ION Trading India Private limited, Building No. 2, Infospace, 4-6th Floor, Block-B, Plot-2, Sector-62, Noida, Uttar Pradesh (here in after called the appellant) is a registered assessee under GST having GSTN: 09AAECA4325R1Z9.

2). The appellant is a private limited company, wholly owned subsidiary of M/s ION Trading UK Limited and engaged in the business of software development which is exported to the overseas company. The appellant entered into a rent agreement with M/s Shantiniketan Properties Private Limited (Building Authority in short) for renting of office premises including certain number of free car parking spaces and certain number of parking spaces on payment of agreed rent per car parking space per month. As the aforesaid car parking spaces were not sufficient, and the employees are in need of more parking spaces, the appellant facilitates procurement of car parking spaces from the Building Authority and procures it on payment of agreed lease charges per car parking space per month.

3). The appellant bears part of the lease charges and the balance amount is equally recovered from all the employees using the parking spaces depending on whether the employee uses the parking space for four-wheeler parking or for two-wheeler parking. The appellant does not claim input tax credit of the lease charges paid to the Building Authority. These lease charges are paid in advance on monthly basis along with Goods and Services Tax leviable thereon.

4). Accordingly, the Appellant has submitted application for Advance Ruling dated 08.07.2019 and sought Advance Ruling on the following issues : -

- i. *Whether amount recovered from the employees towards car parking charges payable to Shantiniketan Properties Private Limited (building authorities), would be deemed as "Supply of service" by the applicant to its employees?*
- ii. *If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?*
- iii. *If GST is payable on the such amount recovered from the employees, whether the GST paid by the applicant to building authorities towards car parking charges would be admissible as input tax credit against supply of car parking services to employees ?*

5). The Authority for Advance Ruling, vide Order No. 42 dated 27.09.2019 ruled that:

"In the absence of requisite documents, as discussed in above paras, no ruling can be given on the questions asked by the applicant."

6). Being aggrieved with the aforesaid Order No. 42 dated 27.09.2019, the appellant filed this appeal application before us.

Grounds of appeal submitted by the appellant:-

7). The appellant made the following submissions in support of his claim:

7.1) That the facilitation of parking spaces between its employees and Building Authority does not amount to supply of services as per the applicable provisions of Central Goods and Services Tax Act, 2017 and Uttar Pradesh Goods and Services Act, 2017. Under GST law, due to reason that for an activity to qualify as supply, it is required to be made in the course or furtherance of business.

7.2) That the appellant is engaged in the business of development and export of software to the Overseas Company. Accordingly, in their view, the term 'Business' as envisaged in the definition provided under Section 2(17) of CGST Act, includes primary business activity of software development services for the Overseas Company.

7.3) The appellant also relied upon the Advance Ruling pronounced by the Maharashtra Authority for Advance Ruling, in case of M/s. Posco India Pune Processing Center Private Limited, wherein it was held that that "*the applicant is not rendering any service of health insurance to their employees. Hence, recovery*

of parents' health insurance expenses from employee does not amount to 'supply of service' under Section 7 of the CGST Act, 2017."

7.4) The appellant further submitted that in case the said activity is supply then the value of such supply should be NIL, as the same is being provided in the capacity of a pure agent. The appellant also submitted that they are not utilizing the amount recovered from the employees (i.e. parking charges) for their own benefit and whatever amount is collected from the employees is passed on to the Building Authority. Since all the four conditions of Rule 33 of CGST Rules are fulfilled, hence, the appellant has opined that it qualifies as a Pure Agent of the employees availing parking facility.

7.5) The appellant submitted that in case, the Authority does not accept the above view and is of the view that a value should be attributed to the supply of services, it should be based on the open market value of such facilitation services (excluding actual parking charges). In the present case, open market value of parking facilitation services provided by an employer to an employee may not be available. However, it is a common business activity for an estate agent, who facilitates the transaction of renting of a property to charge 15 days' rent as facilitation charges for an apartment rented for a period of 12 months or more. Further, facilitation charges are collected one-time only and no service fee is collected thereafter. In case the Authority feels that a value should be attributed to the supply of services, the value of such supply should be determined on a similar basis. Therefore, for a particular parking space, services may be valued at 15 days' lease charges of the first month. As per the appellant, no GST should be applicable on lease charges collected by the appellant and paid to the Building Authority on month to month basis.

7.6) The appellant further submitted that in case the recovery of parking charges is deemed as taxable supply and GST is to be charged by the appellant on the same then it follows that the activity is in the course of or furtherance of business. Accordingly, the appellant is of the view that the input taxes paid/payable to Building Authority for the parking facility should be available as input tax credit. On the other hand if NIL value is not accepted and GST is payable as per valuation decided, then in such a case, input tax credit of GST paid to the Building Authority should be admissible.

8) The appellant was granted personal hearing on 23rd January 2020 and 11th March 2020. Sh. Ravi Jain, Ms. Anjali Jain and Sh. Saket Batra, Chartered Accountants/ Authorized representatives, on behalf of appellant, appeared for

hearing. During the personal hearing they reiterated their submission already made vide their application dated 17.12.2019.

DISCUSSION AND FINDING

9) We have gone through the submissions made by the appellant and examined the detailed explanation submitted by them. We observed that the appeal is mainly based upon the following points viz:-

- a. The facilitation of parking spaces between its employees and Building Authority does not amount to supply of services as per the applicable provisions of CGST Act, 2017, as the activity of facilitation of parking space is not in the course or furtherance of business of software development.
- b. If the same is considered as supply then the value of such supply would be nil as the same is being undertaken by the appellant as pure agent.
- c. The input taxes paid/payable by the appellant, for the parking space, should be admissible as input tax credit to the appellant, if the parking facilitation services are deemed as taxable supply of services leviable to GST.

10). We observe that the contention of the appellant is that while facilitating the car parking space for employees whether the amount recovered from the employees towards car parking charges is a "Supply of service" by the applicant to its employees.

11). 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 of furtherance of business;*
- c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*

d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*"

12). Further, as per Schedule II i.e. "Activities to be treated as Supply of Goods or Supply of Services", of the CGST Act, 2017:-

.....

2. Land and Building

a. *any lease, tenancy, easement, licence to occupy land is a supply of services;*

b....."

As regard to the word "easement" we observe that in common parlance the word easement is defined as "*a right to cross or otherwise use someone else's land for a specified purpose*". Here we observe that the appellant is providing right to its employee's to use parking facility on the parking space provided by the building authority and for this work they are collecting certain amount from their employee. Accordingly we are of the view that the activity in question, provided by the appellant, is squarely falls under the Schedule II i.e. "Activities to be treated as Supply of Goods or supply of Service" of the CGST Act, 2017.

13). Now coming to the second question of the appellant i.e. whether the service provided by the appellant would be in the nature of "pure agent" and what would be the value for the purpose of tax liability, we observe that the conditions to qualify as "pure agent" has been defined under Rule 33 of the CGST Rules, 2017, which are as under:-

"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 authorisation 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.”

14). As regard to the condition “*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*” the appellant has submitted that they obtains parking facility on authorization/request made by their employees and makes payment thereof only on the basis of said authorization. With respect to condition “*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*” the appellant has submitted that they specifically indicated the amount to be recovered from the employees for parking charges in the employee manual, though the same is an approximate amount and the said amount is not clubbed with other charges, if any, recovered from the employees. Now coming to the third condition i.e. “*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*”, the appellant has contended that they, on their own account, provides facilitation assistance to the employees and in addition to this they also procures services of parking from the Building Authority and provides it to employees in capacity of a pure agent.

15). As regard to the explanation regarding “pure Agent” the appellant has submitted that:

a. Any employee who wants the car parking facility formally requests the appellant to facilitate the same with the Building Authority. The employee also provides email/verbal confirmation for availing the facility and also agrees to pay the charges for the parking space.

b. The parking spaces are availed for the sole usage of the employees. This is duly informed by the appellant to the employees as well as to the Building Authority. Further, the appellant submits that in case of surrender of parking

space by any employee, it is immediately surrendered back to the Building Authority.

c. The parking spaces are for the sole usage of the employees. The appellant does not own any vehicles and therefore the parking spaces have no relevance for the operations of the Appellant.

d. The appellant recovers the amount of parking charges payable to the Building Authority from all the employees using the parking facility and nothing more. Further the entire amount recovered from the employees is paid to the Building Authority towards parking charges.

16). Further, we observe that the Authority of Advance Ruling, Maharashtra, in the case of M/s DRS Marine Services Pvt. Ltd., has observed that, *"Applicant will be acting as a pure agent of RMS in as much as the entire amount received by them as Crews' Salary will be disbursed to the Crew and no amounts from the said receipt will be used by the Applicant for his own interest"*. In the instant case also, we observe that the appellant has contended that they are transferring the entire amount collected, from their employees towards parking charges, to the Building Authorities. Accordingly, in view of aforesaid discussion we observe that the value of the services in the present case will be NIL, as the appellant is providing the same in the capacity of a Pure Agent, subject to the fulfillment of the conditions prescribed for "Pure Agent".

17). Now coming to the third question i.e. if the GST is payable on the such amount recovered from the employees, whether the GST paid by the applicant to building authorities towards car parking charges would be admissible as input tax credit against supply of car parking services to employees, we observe that though the activity undertaken by the appellant is a supply of service, in terms of Section 7(1) of the CGST Act 2017, however the value of the service would be nil, as the appellant is acting in the capacity of Pure agent for their employees, subject to the fulfillment of conditions. Accordingly the question becomes redundant.

18). In view of discussions held above, we give the following ruling unanimously,

RULING

Question i. :- Whether amount recovered from the employees towards car parking charge payable to Shantiniketan Properties Private Limited (building authorities), would be deemed as "Supply of service" by the

applicant to its employees?


Answer:- The question is answered in affirmative.


Question ii. - If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?

Answer:- Value of the supply would be nil, subject to the fulfillment of the conditions prescribed for pure agent by the appellant.

Question iii.- If GST is payable on the such amount recovered from the employees, whether the GST paid by the applicant to building authorities towards car parking charges would be admissible as input tax credit against supply of car parking services to employees ?

Answer:- As the second question is answered in negative hence the question become redundant.


(Amrita Soni)
Member AAAR
SGST


(Ajay Dixit)
Member AAAR
CGST

To,

M/s ION Trading India Private limited,
Building No. 2, Infospace, 4-6th Floor,
Block-B, Plot-2, Sector-62, NOIDA,
Uttar Pradesh- 201 309.

AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 11

Date: 16/03/2020

Copy to -

1. The Joint Commissioner, CGST & Central Excise, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for 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-II, Noida, Room No. 402, 4th Floor, C-56/42, Renu Tower, Sector-62, Noida, Uttar Pradesh- 201 307;
5. Through the Additional Commissioner, Commercial Tax, Noida-I Uttar Pradesh to jurisdictional tax assessing officers.