

AUTHORITY FOR ADVANCE RULING - MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :advance.ruling @mptax.mp.gov.in****Phone : 0731- 2437315****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT, 2017**Members Present****1. Shri Virendra Kumar Jain****Additional Commissioner****Office of the Commissioner CGST and Central Excise(Audit), Indore****2. Shri Manoj Kumar Choubey****Joint Commissioner****Office of the Commissioner of Commercial Tax, Indore Division-1**

GSTIN Number. If any/User-id	23ABNFM6268J1ZS
Name and address of the applicant	M/S MAA ASSOCIATES 125, Near Jain Mandir, Sangam colony, Baldeobagh (M.P)Jabalpur- 482002
Point on which advance ruling sought	d. admissibility of input tax credit of tax paid or deemed to have been paid e. determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	Shri Deepak Asrani, CA.
Case Number	12/2021
Order dated	30/03/2022
Order Number	04/2022

PROCEEDINGS**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. M/s Maa Associates (hereinafter referred to as 'Applicant'), is a company providing buses on hire(service) in Indore, Jabalpur & Bhopal City under smart city project with AICTSL, JCTSL & BCLL for the transportation of passenger. It is registered with the GST Authorities in the State of Madhya Pradesh and has been granted Registration No 23ABNFM6268J1ZS.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

BRIEF FACTS OF THE CASE AND SUBMISSION OF THE APPLICANTS IN THEIR APPLICATION IS AS UNDER -

- 3.1. The Applicant seeking advance ruling regarding the taxability of the said services & input to be taken on buses and repairs and Maintenance Expenses as same is allotted with the work through Tender Process.
- 3.2. The Service Recipient companies BCLL, AICTSL, and JCTSL is State Govt. Company.
- 3.3. The Service Recipient companies will be paying the service provider on the total effective run kilometre.
- 3.4. Applicant is providing non AC buses with Drive, Fuel, Repairs and Maintenance of buses.
- 3.5. Route of the buses & the applicable fare will be decided by service Recipient and provide the transportation services to passenger.



4. QUESTION RAISED BEFORE THE AUTHORITY -

The Applicant has submitted application u/s 97(1) of CGST Act & MP GST Act seeking Advance Ruling on the following questions;

I) whether tax is applicable on supply of services to BCLL, AICTSL, JCTSL (State Government Co.)

II) Rate of Tax if the same is taxable

III) Admissibility of Input

5. DEPARTMENT'S VIEW POINT-

कार्यालय वाणिज्यिक कर अधिकारी, जबलपुर वृत्त-4 letter no. क्रमांक वाकअ/चार/583 dated 23rd September 2021 submitted his comments as under :-

मे0 मॉ एसोसियेटेड जबलपुर द्वारा AICTSL, INDOR, DCLL, BHOPAL तथा JCTSL, JABALPUR को रेंट पर बसे प्रदाय करने पर माल एवं सेवाकर के दायित्व के संबंध में माल एवं सेवाकर अधिनियम 2017 के अधीन आवेदन प्रस्तुत कर, कर की दर स्पष्ट किये जाने हेतु अनुरोध किया गया है। इस आवेदन पत्र की प्रति एवं उक्त करदाता द्वारा दिये गये विवरण संलग्न करते हुए अधोहस्ताक्षकर्ता का अभिमत चाहा गया है। इस संबंध में अधोहस्ताक्षकर्ता का अभिमत निम्नानुसार है:-

5.1 उक्त तीनों कम्पनियां, कंपनी अधिनियम, 1956 के अधीन रजिस्टर्ड कम्पनियां हैं। इन कम्पनियों का गठन राज्य के अंदर यात्रियों को यात्रा की सुविधा प्रदाय करने के लिये किया गया है। इस प्रयोजन के लिये कम्पनी द्वारा बसों की खरीद, किराये पर लेना तथा रेंट पर ले कर बसें चलाने का उद्देश्य उल्लेखित है। इस प्रकार उक्त तीनों कम्पनियां मुख्य रूप से यात्रियों के परिवहन के उद्देश्य के लिये संचालित हैं।

5.2 भोपाल सिटी लिंक लिमिटेड के द्वारा रेंट पर बसें प्राप्त करने के लिये खुली बोली लगाने के लिये प्रकाशित संक्षेपिका में उल्लेख किया गया है कि राज्य में यात्रियों के समुचित परिवहन हेतु अर्बन लोकल बाडीज को खुली बोली के माध्यम से बसे प्राप्त करना है। इस उल्लेख से यह स्पष्ट हो जाता है कि बसें प्राप्त करने वाली एजेंसी उक्त कम्पनियां हैं।

5.3 केन्द्रीय माल एवं सेवाकर अधिनियम 2017 के अधीन अधिसूचना क्रमांक 11/2017 सेन्ट्रल (रेट) दिनांक 28.06.2017 के द्वारा ट्रांसपोर्ट वाहनों की रेंटल सेवा पर कर की दर निर्धारित की गई है। इस अधिसूचना के अनुक्रमांक 10 पर हैडिंग 9966 के अंतर्गत वाहनों की रेंटल सेवाओं पर कर की दो दरें निर्धारित की गई हैं। ऐसे मोटर कैब जिनमें ईंधन का मूल्य सम्मिलित है, के रेंट पर देने पर कर की दर 5 प्रतिशत अधिसूचित है तथा इसके साथ यह शर्त है कि सेवा प्रदाता को किसी प्रकार का इनपुट टैक्स क्रेडिट प्राप्त नहीं होगा। शेष अन्य वाहनों की रेंटल सेवाओं



40

पर कर की दर 18 प्रतिशत अधिसूचित है तथा इसके साथ कोई शर्त नहीं है। अर्थात् इस दर से कर चुकाने वाले सेवा प्रदाता को इनपुट टैक्स क्रेडिट की पात्रता है। इस प्रकार उक्त अधिसूचना की प्रविष्टि क्रमांक 10 के अंतर्गत उक्त सेवा प्रदाता द्वारा उपर उल्लेखित कम्पनियों को बस रेंट पर देने पर 18 प्रतिशत की दर से जीएसटी देय है।

किन्हीं परिस्थितियों में नागपुर नगर निगम द्वारा किराये पर बसें लेते समय सेवा प्रदाता पर जीएसटी के दायित्व के संबंध में विवेचना करते हुए महाराष्ट्र अर्थारिटी फार एडवांस रूलिंग द्वारा दिये गये निर्णय में यह कहा गया है कि नागपुर नगर निगम को रेंट पर बसें देने वाली एजेंसी पर 18 प्रतिशत की दर से जीएसटी का दायित्व आयेगा। महाराष्ट्र राज्य के एडवांस रूलिंग अर्थारिटी के उक्त निर्णय के प्रकाश में मॉ एसोसियेटेड्स जबलपुर द्वारा उक्त उल्लेखित तीनों कम्पनियों को रेंट पर प्रदाय की गई बसों पर 18 प्रतिशत से जीएसटी का दायित्व आना निर्णीत किया जाना उचित होगा।

आवेदक मॉ एसोसियेटेड्स जबलपुर द्वारा यह दावा किया गया है कि उनके द्वारा रेंट पर बसों का प्रदाय सरकारी कम्पनियों को किया गया है इसलिए उनके संदर्भ में अधिसूचना क्रमांक 12/2017 सेन्ट्रल टैक्स (रेंट) दिनांक 28.06.2017 के अंतर्गत अनुक्रमांक 22 के अंतर्गत जीएसटी के दायित्व से पूर्णतः छूट दी गई है जो आवेदक के उपर लागू होगी। इस अधिसूचना द्वारा हैडिंग 9966 एवं हैडिंग 9973 के अंतर्गत आने वाली सेवाओं में से स्टेट ट्रांसपोर्ट अंडरटेकिंग को रेंट पर बसें प्रदाय करने को करमुक्त अधिसूचित किया गया है। वस्तुतः उक्त तीनों कम्पनियां अर्गन लोकल बॉडी के स्वामित्व में गठित की गई कम्पनियां हैं, इनका गठन राज्य सरकार के स्वामित्व के अंतर्गत नहीं हुआ है। इसलिए इन कम्पनियों को स्टेट ट्रांसपोर्ट अंडर टेकिंग नहीं कहा जा सकता है। इसलिए आवेदक पर उक्त अधिसूचना लागू नहीं होगी।

उक्त तथ्यों के प्रकाश में आवेदक पर 18 प्रतिशत की दर से जीएसटी का दायित्व निर्धारित करना उचित होगा।

Later on copy of ROC of the three transport companies and the definition of "State Transport Undertaking" as defined under section 2(42) of Motor Vehicle Act, 1988 provided by the applicant during time of hearing was sent by this authority to the Jurisdictional officer, for perusal and to give the view on the question raised by the applicant as per the document provided by the applicant. The Jurisdictional officer by letter no- 183 Dated 14-03-2022 give a fresh opinion on the issue. The opinion in short given is as follow - "उपरोक्त तथ्यों के प्रकाश में केन्द्रीय कर की अधिसूचना क्रमांक 12/2017 दिनांक 28.06.2017 के अनुसार हैडिंग नंबर 9966/9973 "Services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to



carry more than twelve passengers ; or (b) to a goods transport agency, a means of transportation of goods. " (should not be taxable)

उक्त अधिसूचना के आधार पर आवेदक के द्वारा प्रदान की जाने वाली सर्विस करमुक्त किया जाना उचित होगा।"

6. RECORD OF PERSONAL HEARING -

6.1 MrDeepak Asrani , CA on behalf of Applicant appeared for personal hearing and reiterated the submissions already made in the application, and attached additional submissions as follows:

- 1) Seeking Ruling that the Whether GST Will be applicable on the services provided by them to the companies mentioned above.
- 2) Whether Notification No 12/2017 dated 26.06.2017 Applicable to them
- 3) What would be the rate of Taxation if the GST is applicable on the same

As per the Tender Maa Associates have to Operate 32-38 Seater Buses with ITMS technology

6.2 Breif About the Tender (Copies also provided)

Companies Bhopal City Link Limited (BCLL) for Bhopal , Atal Indore City Transport Services Limited(AICTSL) for Indore, Jabalpur City Transport Service Limited (JCTSL) for Jabalpur floated a Tender for **"Selected as the Bus Operator on Procure, Operate and Maintain basis in Bhopal City , Indore City & Jabalpur City "** respectively.

Here BCLL, AICTSL & JCTSL is the state Government company as mentioned in the company category as per the Master Data Available in the Website of the Ministry of the Corporate Affairs (MCA-21)

The above State Transport company is the Special Purpose Vehicles (SPVs) in the ownership of Urban Local Bodies has been incorporated to provide an organized dimension to public transportation in the Routes for the conveyance of public.

6.3 Main Object of the company formed a special purpose vehicle :-

To establish and maintain line of passenger's coaches and other vehicles generally to transport passengers and to purchase, charter, hire build and otherwise acquire passenger coaches and buses to let out, hire or charter or otherwise deal with and dispose off any such coaches and buses.

As per RFP the object of the Tender



Handwritten signature or initials in blue ink.

The actions seek to promote the Organized Public Transport, reduce the use of private vehicles and to develop a mass transport of passenger service in city. The Public Transport System in city is being developed and implemented through a Special Purpose Vehicle (SPV), as a strategy for solving the mobility problems of the city under the perspective of prioritizing the mass public transport system as opposed to individual / unorganized transport systems in order to structure an integrated transport system which offers higher safety, quality, security and reliability from users of Public Transport Corridors with the highest passenger demand in city.

SPV shall ensure operation on business lines with "Good Industry Practice" using a Public Private Partnership model, providing acceptable quality services to maximum number of people at scheduled prices on a sustainable basis. While the BCLL focuses on planning, service standards setting, monitoring and control of quality of services; bus operator will focus on purchase of buses on Viability Gap Funding (VGF), repair and maintenance, availability, cleanliness and deployment and operations (including but not limited to purchase of fuel, tyres, batteries and other consumables, hiring, training and deploying drivers), for Premium per kilo meter for 8 years. In this scheme, the bus operator will operate and maintain buses during Agreement period. Bus operator is also responsible for all statutory, regulatory and legal requirements associated with the bus transport system. The fare-box revenue collection shall be done by the BCLL or Collection Agency assigned by BCLL. Urban Development and Housing Department is responsible only for Comprehensive and Integrated Bid Process Management System till selection of successful bidder and LOI shall be issued and Bus Operator Agreement shall be executed by the respective SPV only.

Here M/s Maa Associates fulfil the tender conditions and Qualify for the same and same has been awarded to them.

Applicant M/s Maa Associates will raise the Invoice which is Revenue per Kilometre which will be paid by the companies , with a guarantee of minimum average run of 180 kilometres per day over a month, subject to availability of buses.

Calculation of Kilometres:-

i. The BCLL shall pay **hire charges** through Escrow Account for the actual effective kilometres at the rate determined through the tender process.

Distance operated for making payment will be reckoned from the nearest bus stop on the designated route point for plying vehicles as per the kilometers of the trip distance as per time table.



2. Distance travelled by the Contracted Bus from the Bus Depot/Parking Space to the first point of loading passengers at the commencement of its service on a day and Distance travelled by the Contracted Bus from its last passenger stop as per the Operating Plan to the Bus Depot/Parking Space at the end of the day's service shall not be considered.
 3. Distance travelled by a Contracted Bus, which is outside the Operating Plan but approved by the BCLL for specific and special requirements, shall be considered.
- ii. The Operator shall make available the bus for minimum service hours as decided by BCLL. In case a bus is not made available for service hours as decided by BCLL in a day, it will not be counted as a day for the purpose of reckoning the number of days operated in a month.
- iii. In case of cancellation of kilometers trips for any reason payment shall be made for actual km operated.
- iv. Bus Kilometers shall not constitute the following:
1. Any kilometres travelled by the Contracted Bus to a maintenance facility set up by the Operator at the Bus Depot/Parking Space provided by BCLL or for any travel not authorized by BCLL.
 2. Distance travelled by a Contracted Bus to fuelling facility set up by the Operator at the Bus Depot/Parking Space provided for by BCLL.
 3. Kilometres from the point of the breakdown to the destination point in case of break down wherein BCLL can divert the passengers to any other **hired** bus of BCLL.
- 49 v. Increase in route kilometre due to enforcement of law and order shall not be reckoned for **hire** charges where BCLL has not changed its fare structure.
- vi. Operator is free to keep spare diesel buses for smooth running of contracted Diesel Buses. The Operator shall at all times during the contract period maintain 96% of the buses every day excluding 2 days in a month for maintenance. If it fails to provide, additional penalty will be charged as per mentioned in the RFP for Deficiency and Incident Wise Damages/ Fines of the agreement.
- vii. In case of an accident where the bus is detained by police authorities or impounding of vehicle by any other statutory BCLL, penalty will be imposed for the period for which the vehicle is detained or impounded As per the Applicant services provided (Procure, Operate & Maintain Buses having capacity of more than 12 passengers) by them to the companies are



covered under the Notification No 12/2017 Central Tax (Rate) dated 28.06.2017

6.4 As per Notification No 12/2017 Central Tax (Rate) of CGST dated 28.06.2017

In entry No. 22 Heading 9966 or Heading 9973

Service by way of giving on hire –

- a) To a state Transport undertaking , a motor vehicle meant to carry more than twelve passengers or**
- b) To a goods Transport agency , a means of Transportation of Goods**

Rate Prescribed as NIL , with Condition as NIL

Whereby State Transport Undertaking has the same meaning as assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

As per Clause 42 of the section 2 of the Motor Vehicle Act, 1988

6.5 Section 2 (42) of Motor Vehicle Act,1988

(42) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);
- (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.
- (iv) Zila Parishad or any other similar local authority.] 1[(iv) Zila Parishad or any other similar local authority.]"

Explanation.—For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

6.6 Further vide Circular No. 164 /20 /2021-GST dated 06/10/2021 **Entry Number 8** it has been clarified that

Renting of vehicles to State Transport Undertakings and Local Authorities

6.6.1 Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

Sl.No. 22 of this notification exempts "services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve

40



passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers”.

6.6.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 12/2017-Central Tax (Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

6.6.3 It is relevant to note in this context that Schedule II of CGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) refers]

6.6.4 The issue was placed before the 45 GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the expression “giving on hire” in Sl. No.22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles .

6.6.5 The applicant also submitted letters of the companies from which the applicant got the tender and also the R.O.C of the company. The letters and R.O.C shows that AICTCL, BCLL, JCTSL are State Government company.

7. DISCUSSIONS AND FINDINGS –

7.1 We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the jurisdictional officer.

7.2 The applicant had filed the application seeking ruling on questions stated in para 4 above. We shall take up the questions in the order in which they have been put before us and accordingly, we shall discuss the applicability of GST on the sale of Developed Plot of land for which consideration is received before issuance of completion certificate.

7.3 Before the question put forth by the applicant is discussed, we feel it is pertinent to discuss the taxability of land per se under the GST Laws.

7.4 The applicant has entered into agreement for operating buses with Atal Indore City Transport Service Limited, Bhopal City Link Limited and Jabalpur City



Transport Services Limited (hereinafter alternately referred to as “client” for the sake of brevity. The applicant is desirous of obtaining an advance ruling in respect of the supply of service being made by the applicant to the clients and has filed the application seeking ruling on questions stated in para 4 above, which relate to taxability, rate of tax and admissibility of input. The second and third questions come into picture only if in reply to the question relating to taxability, the supply is held to be taxable. Therefore, we first proceed to decide the question regarding taxability.

7.5 The questions relate to applicability of a notification, eligibility to ITC and taxability of outward supply which are covered u/s 97(2)(b), 97(2)(d) and 97(2)(e) respectively. Therefore, the application is admissible.

7.6 The applicant has furnished the following documents in evidence of the scope of the work being done and to establish the nature of the supply of service being made by the applicant:

- NIT NO. 458 AICTSL/Transport/Jan-2020/1st Call for selection of Bus Operators for Intra City Bus service in Indore City on Procure, Operate and Maintain Basis”;
- Agreement with Atal Indore City Transport Services Limited dated 14.01.2021;
- Agreement with Bhopal City Link Limited dated 12.11.2020;
- Agreement with Jabalpur City Transport Services Limited dated 12.11.2020;
- Memorandum and Articles of Association of Bhopal City Link Limited;
- Letter dated 29.10.2021 from Jabalpur City Transport Services Limited regarding its constitution;
- Letter dated 28.10.2021 from Bhopal City Link Limited regarding its constitution; and
- Letter dated 24.01.2022 from Atal Indore City Transport Services Ltd. regarding its Constitution .

7.7 Perusal of the documents listed above and the application of the applicant, the scope of the services provided and to be received by the applicant under these agreements appear to be as under:

- a) The applicant shall provide the buses, operate them (provided Drivers and Fuel) and Maintain the buses;
- b) AICTSL shall provide the routes on which the buses shall operate and collect revenue from the passengers; and



- c) The revenue for the work done shall be paid to the applicant as Hire Charges through Escrow Account for the actual effective kilometres run by each bus. The rate per kilometre is decided in the tender.

7.8 There are further details in the agreement regarding the conduct of the parties to the agreement and also the regarding quantification of the consideration under the agreement, however, they need not be discussed since they do not have any bearing on the nature of the service being provided under the agreement. Further, the agreements with all the three clients are identical so far as the scope of service is concerned therefore, any reference to agreement hereafter shall refer to each of the three agreements between the applicant and the client.

7.9 The supply relates to transportation of passengers on behalf of the client, where the buses are operated and maintained by the applicant and management of the route, stops and collection of fee is done by the client. Therefore, the service of transportation of passengers is being provided by the client. The supply being made by the applicant is that of mode of transportation and therefore, in the nature of renting / hiring of the mode of transport.

7.10 The following entries in Notification No. 11/2017 – Central Tax (Rate) and 12/2017 – Central Tax (Rate) are relevant for deciding on the taxability of the service of providing mode of transport, operating and maintaining them under the arrangement of the applicant with the client:

a) 11/2017 – Central Tax :-

(3)	(4)	(5)
40 “(i) <u>Renting</u> of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken. [Please refer to <i>Explanation</i> no. (iv)]
		Or
	6	-

(emphasis supplied)

b) 12/2017 – Central Tax :

22	Heading 9966 or Heading 9973	<p>Services by way of giving on <u>hire</u> -</p> <p>(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or</p> <p>(aa) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; or</p> <p><i>Explanation.</i> - For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.'.</p> <p>(b) to a goods transport agency, a means of transportation of goods.</p> <p>(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.</p>	Nil	Nil
----	------------------------------------	--	-----	-----

(emphasis supplied)

11 It may be noted that the terms used in the entries above are different, where the term "**rent**" is used in entry no. 10 of Notification No. 11/2017 – Central Tax (Rate), the term "**hire**" is used in entry no. 22 of Notification No. 12/2017 – Central Tax (Rate). In the legacy law of Service Tax (Chapter V of the Finance Act, 1994), the matter has been disputed before the many forums and there are judgements differentiating the two terms as well as judgements that have



treated the two terms to be same so far as taxation of service under Chapter V of the Finance Act, 1994 is concerned.

7.12 While the Uttarakhand High Court in Commissioner v. Sachin Malhotra — 2015 (37) S.T.R. 684 (Uttarakhand) had held that Renting and Hiring are different activities and are to be treated differently for taxation under the Finance Act, 1994, the Allahabad High Court in Anil Kumar Agnihotri Vs Commissioner Of Central Excise, Kanpur reported in 2018 (10) G.S.T.L. 288 (All.) has departed with the Uttarakhand High Court's. Also, the Honorable Gujarat High Court in the matter of Vijay Travels has held that renting and hiring are not different so far as tax treatment for service tax is concerned. The matter is currently before the Honorable Supreme Court.

7.13 Amongst these orders, the matter relating to M/s Vijay Travels merits attention. We have gone through the judgement in the matter of Vijay Travels, passed by the Honorable Gujarat High Court. The Honorable Court has not only provided a clear opinion on the treatment of the term "rent" and "hire" for the purpose of taxation under service tax, but has also considered Section 74 and 75 of the Motor Vehicles Act and has ruled on the effect of those provisions on the treatment of these two terms. The Honorable Court in the order, at para 14.3 has stated as under:

"14.3 Renting means a usually fixed periodical return, especially, an agreed sum paid at fixed intervals by a person for any use of the property or car. It is also the amount paid by a hirer to the owner for the use of the property or a car. Hiring is also engaging services or wages or other payment. It also amounts to engaging temporary use.

It cannot be disputed that both in "renting" and "licensing", *de facto* possession of the thing is enjoyed. Difference is well carved out under the law wherein both, *de jure* possession and control is given, but in "renting", it is right-in-rem whereas in "licensing", it is right-in-persona. When rent-a-cab scheme operator gives the car on rent, *de facto* possession is, of course, there but, it is not acceptable to uphold that wherever *de jure* control and possession of the vehicle stands transferred in law from the owner to the person on renting/hiring the service that the service tax is leviable and this is, of course, not different than services rendered on a contractual basis, providing transport service for fixed amount of periodical return or fare.



40

We need not be oblivious of the fact that for the purpose of regulating the business of renting of motor cabs or motor cycles to persons who are desirous of driving by themselves or through drivers, either for their own

use or for any matters connected herewith, the scheme is made by the Central Government,

Conceptually and essentially, if the nature of service provided is the same, natural corollary is that such service shall be taxed under the taxing statute. It nowhere culls out from the taxing statute that the same contemplated taxing those services where legal possession is handed over by the owner of the person renting the vehicle and where such *de jure* possession continue with the owner or person providing the service to the customer, such service is to be excluded.

We also need to remind ourselves that concept of providing transportation service where *de jure* control remains with the owner or company of the vehicle and the driver and yet, it functions in accordance with the wish and desire of the person hiring such vehicle is extremely popular in India unlike the concept of person renting the cab desiring to drive himself by having all liabilities on himself. In absence of any specific exclusion in the statute of such service from the taxing net, large portion of such services cannot be held to be non inclusive by any artificial interpretation.

Principle of *contemporaneous exposition* whereby yellow and black taxis are not subjected to service tax also would not preclude us to resort to such interpretation."

7.14 We are also of the view that the different tax liability cannot be fastened on identical service by terming them as "rent" and "hire". Further, it may be noted that under the consideration under the agreement in the form of "hire".

7.15 The term State Transport Undertaking is defined under Notification No. 12/2017 – Central Tax (Rate) as under:

(zzk) "state transport undertaking" has the same meaning as assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

Further, State Transport Undertaking as per Section 2(42) of the Motor Vehicles Act, 1988 is as under:

(42) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,--

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);



(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;

(iv) ZillaParishad or any other similar local authority.

Explanation.--For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

As per ROC , submitted by the applicant ,of Atal Indore City Transport Service Limited, Bhopal CityLink Limited and Jabalpur City Transport Services Limited are companies submitted by the applicant State Government companies.

7.16 On a joint reading of the terms of the agreement, high court rulings, Entry No. 10 of Notification No. 11/2017 – Central Tax (Rate) and Entry No. 22 of Notification No. 12/2017 – Central Tax (Rate) it appears that supply covered under the agreement entered into by the applicant with AICTSL is covered under Entry No. 22 of Notification No. 12/2017 – Central Tax (Rate) and is an exempt services.

7.17 Our view is further supplemented by para 8 of Board Circular No. 164/20/2021 – GST dated 06.10.2021, wherein it has been clarified on the recommendation of the GST Council that “giving on hire” in Entry No. 22 of Notification No. 12/2017 – Central Tax (Rate) includes renting of vehicles.

7.18 Once the supply is exempt, the question relating to rate of tax and admissibility of input tax credit is redundant.

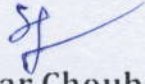
8 Ruling

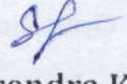
8.1 On a joint reading of the terms of the agreement, high court rulings, para 8 Board Circular No. 164/20/2021 – GST dated 06.10.2021, Entry No. 10 of Notification No. 11/2017 – Central Tax (Rate) and Entry No. 22 of Notification No. 12/2017 – Central Tax (Rate) it appears that supply covered under the agreement entered into by the applicant with AICTSL, BCLL, JCTSL, which are state government companies as per ROCs submitted by the applicant, is covered under Entry No. 22 of Notification No. 12/2017 – Central Tax (Rate) and is an exempt services.

8.2 Once the supply is exempt, the question relating to question no. II and III on tax and admissibility of input tax credit is redundant.

8.3 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.




(Manoj Kumar Choubey)
(Member)


(Virendra Kumar Jain)
(Member)

Copy to:- No. 12/2021/A.A.R/R-28/16

INDORE dated 30/03/2022

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore / Jabalpur
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer - State/Central

सत्यप्रतिलिपि

