

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF
THE GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G. Venkatesh, I.R.S Member/ Additional Commissioner,
Office of the Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K. Latha, M.Sc., (Agri.), Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No.14 /AAR/2022 DATED: 31.03.2022

GSTIN Number, if any / User id		33AAACS4944A2ZT
Legal Name of Applicant		M/s. Sundaram Finance Limited
Registered Address/Address provided while obtaining user id		21, Patullos Road, Ground Floor, Taxation Department, Chennai 600 002.
Details of Application		GST ARA- 01 Application Sl.No.36/2021 ARA dated: 18.10.2021
Concerned Officer		State: Assistant Commissioner(ST) Annasalai Assessment Circle, Centre: North Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Supply of Service.
B	Description (in Brief)	The applicant is in the Business of Leasing of Automobiles, Equipments & Machinery, etc
Issue/s on which advance ruling required		1. Determination of the liability to pay tax on any goods or services or both 2. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Question(s) on which advance ruling is required	<p>Whether the portion of the certain additional services viz., payment of road tax/registration fees, insurance premium, etc., rendered by the applicant in the course of its Leasing of the vehicle/s to the Lessee falls under the category of “services of a pure agent”?</p> <p style="text-align: center;">Or</p> <p>Whether the recovery of Motor Vehicle Registration fee, Motor Vehicle life Tax & RTO charges etc., by the applicant from the lessee for the registration of the vehicle in the name of the lessee forms part of the value of supply or the applicant is acting as a pure agent for this purpose and so the above charges do not form part of the taxable supply?</p>
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Sundaram Finance Limited, 21, Patullos Road, Chennai 600 002 (hereinafter called the Applicant) is registered under GST Vide GSTIN 33AAACS4944A2ZT. The applicant is a Non-Banking Financial Company having its registered and head office at Chennai and among its other finance services, is also involved in the business of leasing. The Leasing business

involves leasing of machineries, commercial vehicles, and non- commercial vehicles. The Applicant has separate GST registrations for its leasing business in eleven States. They have sought Advance Ruling on the following question:

1. Whether the portion of the certain additional services viz., payment of road tax/registration fees, insurance premium, etc., rendered by the applicant in the course of its Leasing of the vehicle/s to the Lessee falls under the category of “services of a pure agent”?

Or

2. Whether the recovery of Motor Vehicle Registration fee, Motor Vehicle life Tax & RTO charges etc., by the applicant from the lessee for the registration of the vehicle in the name of the lessee forms part of the value of supply or the applicant is acting as a pure agent for this purpose and so the above charges do not form part of the taxable supply ?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that the Lessee/customer approaches them with a request to extend leasing facility upon such terms and conditions. The Lessee is the one who decides the make, model and class of Assets required for his use, including identifying of the supplying dealer and approaches them for extending lease facility. Once the lease terms are agreed, they both enter into the required lease agreement. The legal ownership of the Assets rest with the applicant and the lessee holds the same as a mere bailee of the lessor. As per the master lease agreement, they being the Lessor at the request of the Lessee (customer) agree to purchase and let on lease the Assets for lessee's use. The period of lease and the terms and conditions for payment of lease amount are contained in the supplemental agreement(s). Though the Assets to be leased out by the applicant are billed by the vehicle dealer in the name of the applicant, the lessee shall be solely responsible for taking/obtaining delivery and possession of the same from the dealer in terms of the Master lease Agreement and Supplemental Lease Agreement entered with the applicant. In case where the leased asset happens to be vehicles requiring registration, since the Lessee is the actual user of the vehicle and the person who will be in

control and possession of the same and at whose request the vehicle has been purchased by the applicant/Lessor for the purpose of providing it on lease, to comply with the provisions of the Motor Vehicles Act, the vehicle is allowed to be registered in the name of the Lessee. The registration certificate pertaining to the vehicle will bear an endorsement of the Applicant's name as "Lessor", which will continue until the termination of lease or its early determination. It's the responsibility of the supplying/selling dealer to deliver the vehicle/s after proper registration and hence the supplying dealer demand further payments towards Motor Vehicle Tax, RTO fee, insurance premium, fastag etc., which are also released to the supplying dealer by the Lessor at the request of the Lessee. The Lease rentals are accordingly calculated, and rental repayment schedule is drawn up, which forms part of the Supplemental Lease Agreement. Though leasing is termed as a "Service" as per the GST law, the GST rate applied on the lease rentals is that of the rate that is applicable on the supply of Goods which forms part of the lease, and the GST is accordingly being remitted by them.

2.2 On their interpretation of Law, it is stated that for the purpose of CGST Act, 2017 and TNGST Act, 2017 and the transactions for which advance ruling is sought, the parties are described hereunder:

- | | | | |
|------|------------------|---|--------------------------------------|
| i. | Vehicle dealer | - | Third Party/Supplying Dealer |
| ii. | Applicant/Lessor | - | Lessor/Supplier of Leasing facility |
| iii. | Customer/Lessee | - | Lessee/Recipient of Leasing facility |

The Vehicle dealer (third party) raises a Tax invoice for the vehicle on the applicant (Lessor/supplier of leasing facility) which includes the unit price for the vehicle after discount, if any, CGST @14%, SGST @14% plus compensation cess as may be applicable. A separate debit note is also raised by the Vehicle dealer (Third Party) on the applicant (Lessor/supplier of leasing facility) for the registration & Motor vehicle life tax & RTO charges, accessories, fastag, TCS etc. As of now, they calculate the monthly lease rentals based on the aggregate amounts released by them to the Vehicle Dealer as per terms and conditions with the lessee (recipient) on which the applicant (Lessor/supplier) in the leasing transaction remits GST at the appropriate rate. As regards the registration & Motor Vehicle life tax & RTO

charges, insurance premium etc, these are actuals paid by them to the vehicle dealer (third party) to enable the vehicle to get registered for use by the Lessee. Since the Lessee is the actual user of the vehicle and at whose request the vehicle has been purchased by the applicant/Lessor for the purpose of providing it on lease, they submit that the Applicant/Lessor should be treated as a "Pure Agent" in terms of Rule-33 of CGST Rules in respect of payments made by them towards such additional services viz., registration & Motor Vehicle life tax & RTO charges, insurance premium etc., and thereafter get it reimbursed from the Lessee (recipient) on actual basis. Since the above said charges are passed on to the lessee (recipient) by them as such, these expenditure or costs incurred by them on behalf of the Lessee are to be treated as "services" that are made by them as a "pure agent" of the Lessee (recipient) of the supply and therefore shall not form part of the value of the supply. They submit that these additional payments are statutory requirements, receipted and issued in the name of the Lessee/recipient, including the GST portion, if any, applicable in any of these payments. Thus, when the Applicant/Lessor is acting only as a "pure agent" of the Lessee/Recipient for these payments/services rendered in respect of payment of the above charges to the vehicle dealer (third party) and getting it reimbursed from the lessee (recipient), it should be allowed to exclude these payments from GST chargeability. If the applicant is allowed to act as "Pure Agent" for these road tax and other incidental payments pertaining to the leased asset/vehicle, the applicant shall not capitalize the same in its books. Therefore, the issues on which the Advance Ruling is sought are as under:

- i. Can the applicant be construed as a pure agent falling within the Explanation to Rule 33 of the CGST Rules 2017 and TNGST Rules 2017
- ii. Does the registration & Motor Vehicle life tax & RTO charges, Insurance premium etc., paid by the applicant and thereafter reimbursed by the lessee forms shall be excluded from the value of supply transaction (leasing) done by the applicant
- iii. In the event of the Authority is not convinced that these additional payments don't fall within the ambit of "Pure agent", whether such payments can be treated as separate services by allowing the applicant to apply GST at the rate applicable to general services, viz.

@18% instead of applying the higher rate applicable to the goods forming part of the lease

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant vide their e-mail dated 13.12.2021 communicated that they preferred to be heard physically and not virtually. The hearing was held on 28.12.2021. The Authorised representatives Shri. R.Sridharan, Sr.Gen.Manager & Head-Indirect Taxation and Shri. U.Somanathan, Assistant Gen.Manager -Taxation attended the hearing and reiterated their submissions. They submitted additional submissions in writing. They submitted that they are a Non – banking financial company extending finance facilities for the purchase of vehicles by way of hypothecation and leasing; that a Master agreement is entered into containing general terms and a supplemental agreement containing the period of lease and terms and conditions of payment of lease amount for that transaction. The minimum rate of GST for vehicles is 28% and adding the applicable cess payable on the monthly lease rentals works up to 50%. Further the cost of insurance, fastag which have already suffered GST is taxed again. Hence they have filed the application for ruling. Members questioned whether the actual cost of services are clubbed or is separately charged. The AR replied that they are clubbed and are built into the EMI/rentals. The applicants were asked to submit the following documents:

1. A write up on the entire transaction of leasing
2. Flowchart indicating the time of supply of goods and services separately-
being followed presently and proposed to be done
3. Break-up and calculation of monthly EMI/Rentals
4. Details of title of goods and time of change of title
5. Master lease agreement

3.2 In the written submissions furnished during the hearing, the applicant has re-iterated their submissions on their business activities relevant to the ruling sought and on the questions seeking ruling, they have inter-alia stated as follows:

(I) Can the applicant be construed as a pure agent falling within the Explanation to Rule 33 of the CGST Rules 2017 and TNGST Rules, 2017.

The applicant is of the view that to act as the "Pure Agent" of the Lessee, it satisfies the 3 conditions laid down under Rule-33, as answered below:

- (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;

Ans: The applicant, as Lessor propose to amortize the value of the vehicle alone and consider the other charges, viz., road tax, insurance etc., as items to be recovered on monthly basis by way of raising debit notes to the Lessee.

- (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;

Ans: Yes.

- (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.

Ans: The principal/main supply is the vehicle, and the Lessee will be the actual user of the vehicle and at whose request the vehicle has been purchased by the applicant/Lessor for the purpose of providing it on lease. These supplies are in addition to the supply of vehicle by the Lessor to the Lessee and are statutory requirements for plying the vehicle on road. Hence to be excluded and treated as supplies made as a "Pure Agent".

(II) Does the registration & Motor Vehicle life tax & RTO charges Insurance premium etc., paid by the applicant and thereafter reimbursed by the lessee shall be excluded from the value of supply transaction (leasing) done by the applicant.

- (a) These additional payments are statutory requirements, receipted and issued in the name of the Lessee/recipient, including the GST portion, if any, applicable in any of these payments.

(b) Since the above said charges are intended to be passed on to the lessee (recipient) by the applicant (lessor/supplier) as such, these expenditure or costs incurred by the Applicant (Lessor/supplier) on behalf of the Lessee are to be treated as "services" that are made by the Applicant/Lessor as a "pure agent" and therefore excluded from the value of the taxable supply, which is the vehicle.

(c) If the applicant is allowed to act as "pure agent" for these road tax and other incidental payments pertaining to the leased asset/vehicle, the applicant shall not capitalize the same in its books.

(III) In the event of the Authority is not convinced that these additional payments don't fall within the ambit of "pure agent", whether such payments can be treated as separate services by allowing the applicant to apply GST at the rate applicable to general services, viz., @18% instead of applying the higher rate applicable to the goods forming part of the lease.

Though leasing is termed as a "Service" as per the GST law, the GST rate to be applied on the lease rentals is the rate that is applicable on the supply of Goods which forms part of the lease. The minimum GST rate for vehicles is 28% and adding the applicable Cess ranging from 1% to 22%, the total GST + Cess payable on the monthly lease rentals extends upto 50%. Applying the same GST and Cess rate applicable to goods on such additional supplies made by the Lessor to the Lessee, viz., road tax, insurance, etc., some of which have already suffered GST, certainly burdens the Lessee.

The applicant humbly submits that in case the learned authorities are not convinced on applying the "pure agent" concept for the subject leasing transactions, should consider treating such additional supplies separately and allow the applicant to charge GST as applicable to general services, which is currently 18% and oblige.

4.1 The applicant vide their letter dated 5th January 2022 submitted the following in pursuance of the Personal Hearing held on 28.12.2021

- Overview about Leasing transaction
- Copy of Master Lease Agreement dated 11th Day of May 2005

- Flow Chart of EMI working and supporting documents for lease contract No. YC5002HX
 - Copy of the Supplementary Lease Agreement
 - Copy of Purchase Invoice No. 001/VSL/17000096 dated 23.08.2017
 - Copy of Debit Note No. RC/TN/96/17-18 dated 23.08.2017
 - Copy of Credit Note No. RC/TN/96/17-18 dated 23.08.2017
 - Copy of Lease Monthly Rental Invoice raised to the Lessee-Sample Inv No. L133212205000071 dated 01.05.2021
 - Sale of Leased Vehicle after agreement closure-Sale Invoice No. LS33212208000005 dated 24.08.2021
- Flow Chart of EMI working and supporting documents for lease contract No. BB2015CN
 - Copy of the Supplementary Lease Agreement
 - Copy of Purchase Invoice No. GST/HTN/00688 dated 29.05.2018
 - Copy of Debit Note No. DN/ANR/0743 dated 31.05.2018
 - Copy of Lease Monthly Rental Invoice raised to the Lessee-Sample Inv No. L133212204000013 dated 01.04.2021
 - Sale of Leased Vehicle after agreement closure-Sale Invoice No. LS33212205000004 dated 29.05.2021
- Flow Chart of EMI working and supporting documents for lease contract No. BB2015CR
 - Copy of the Supplementary Lease Agreement
 - Copy of Purchase Invoice No. GH201800307 dated 29.07.2018
 - Copy of Lease Monthly Rental Invoice raised to the Lessee-Sample Inv No. L133212204000013 dated 01.04.2021
 - Sale of Leased Vehicle after agreement closure-Sale Invoice No. LS33212207000011 dated 27.07.2021
- Flow Chart of EMI working and supporting documents for lease contract No. BC2002BN
 - Copy of the Supplementary Lease Agreement
 - Copy of Purchase Invoice No. H201701385 dated 27.09.2017
 - Copy of Debit Note No. DBNH201701385 dated 27.09.2017
 - Copy of Lease Monthly Rental Invoice raised to the Lessee-Sample Inv No. L133212204000042 dated 01.04.2021

- Sale of Leased Vehicle after agreement closure-Sale Invoice No. LS33212209000005 dated 25.09.2021
 - Flow Chart of EMI working and supporting documents for lease contract No. YC5002HW
 - Copy of the Supplementary Lease Agreement
 - Copy of Purchase Invoice No. 661/VSL/17000098 dated 23.08.2017
 - Copy of Debit Note No. RC/TN/98/17-18 dated 23.08.2017
 - Copy of Credit Note No. RC/TN/98/17-18 dated 23.08.2017
 - Copy of Lease Monthly Rental Invoice raised to the Lessee-Sample Inv No. L133212205000071 dated 01.05.2021
 - Sale of Leased Vehicle after agreement closure-Sale Invoice No. LS33212208000004 dated 24.08.2021
- 4.2 In the overview they had stated that
- Under the leasing arrangement, the applicant as Lessor/Owner permits the use of an asset for agreed period (usually 48 to 60 months) for consideration, which is called lease rentals. Common feature in any lease transaction are two important aspects:
 - (a) The Lessee/customer pays a certain sum by way of rentals every month as per lease term and
 - (b) The Lessee /customer is responsible for the vehicle in possession and usage.
 - The leased assets being predominantly passenger cars are taken on lease by the corporate companies which are intended for their executives and the choice of the vehicle is given to the executives based on their entitlement. Once the car is identified by the executive, the corporate company, as Lessee, enters into the lease agreement for the identified car with the applicant/SFL as Lessor. The applicant, being the title holder, needs protection under the lease agreement against any loss or liability arising out of the usage of the asset. Therefore, the vehicle to be leased out by the applicant will be billed by the vehicle dealer in the applicant's name, as "Lessor" with the name of the customer as "Lessee". The Lessee/customer alone shall be solely responsible for taking/obtaining delivery and possession of the vehicle from the vehicle dealer/supplier. However, since the Lessee is the actual user of the vehicle and the person who will be in control and

possession of the same, to comply with the provisions of the Motor Vehicles Act, the vehicle is allowed to be registered in the name of the Lessee with an endorsement marking the Lessor's/SFL's interest over the vehicle in the registration certificate. To deliver the vehicle after proper registration, the supplying vehicle dealer demands additional payments towards Motor Vehicle Tax, RTO fee, insurance premium, fastag etc., which are also released to the supplying dealer by the applicant at the request of the Lessee.

- The Lease rentals are accordingly calculated, and rental repayment schedule is drawn up, which forms part of the Lease Agreement. Thus, in a lease, the applicant being the owner of the leased asset, retains the ownership and transfers the right of usage of the asset alone to the Lessee. At the end of the lease period or early foreclosure, the vehicle will be sold by the applicant to a third party other than the Lessee. Generally, the executives who were using the car till then offers to buy the assets as a third party. The applicant considers effecting sale to such executives, being not its lessee. This is also in strict compliance with the legal, taxation and accounting requirement of a lease. During such end sale also, the applicant charges GST rate as applicable to new vehicles and remits the same to the government.
- Though leasing is termed as a "Service" as per the GST laws, in terms of Central Tax (Rate) Notification No.11/2017 and Compensation Cess (Rate) Notification No.2/2017 both dt.28.06.2017, the GST rate/cess to be applied on the lease rentals is that of the same rate that is applicable on the supply of Goods which forms part of the lease. The applicant accordingly collects GST from the Lessee and remits the same to the Government after availing the input tax. The minimum rate of GST applied for cars is 28% (CGST @14%, SGST @14%) plus compensation cess as may be applicable. A separate debit note is also raised by the Vehicle dealer (Third Party) on the applicant (Lessor/SFL) for the registration of the Motor vehicle life tax & RTO charges, accessories, fastag, TCS etc., which are released by the applicant. The applicant applies the same GST rate as applicable to Goods on these additional service supplies also, viz., Motor vehicle tax, insurance etc., some of which have already suffered GST, and remits the same to the government. Applying the same minimum GST rate for vehicles i.e.,

28% and adding the applicable Cess ranging from 1% to 22%, the total GST + Cess payable on the monthly lease rentals extends upto 50% on such additional supplies made by the applicant Lessor to the Lessee, viz., road tax, insurance, etc., certainly burdens the Lessee. Hence the applicant/SFL has filed the above application for advance ruling (AAR) for treating these additional supplies as one made by the applicant/SFL as a "pure agent".

5.1 The State Jurisdictional Authority, Assistant Commissioner(ST), Annasalai Assessment Circle, who has the administrative Jurisdiction over the applicant vide letter RC.No. 1400/2021/A3 dated 27.11.2021 has stated as follows:

➤ Rule 33 of the TNGST Rules, 2017 read with CSGST Rules 2017 explains the concept of Pure Agent and Tvl. Sundaram Finance Limited, may not be treated as a "Pure Agent" falling within the Explanation to Rule 33 of the CGST Rules, 2017 and TNGST Rules 2017 for the following reasons:

1. The registration fees of Motor Vehicles, Motor Vehicle Life Tax, RTO Charges and Insurance are the payments which are necessarily to be made before releasing of the vehicles. Without those payments, the vehicles would not be allowed to run on the roads.
2. Though the payments are being paid in the name of lessee, the lessor Tvl. Sundaram Finance Limited, being the co-owner of the leased vehicles until the period of lease, may not, suomoto, relieved from any of the consequences in case of default if any on the payment of those payments.
3. Owing to the above reasons, I am of the opinion that the lessor Tvl. Sundaram Finance Limited, may not be treated as "pure Agent" in respect of the said payment of registration fees of Motor Vehicles, Motor Vehicle Life Tax, RTO Charges and Insurance and not entitled for exemption from levy of tax under the provisions of GST Act 2017.

5.2 The Center Jurisdictional authority has not furnished any comments/remarks on the questions raised by the applicant. Hence, it is

construed that there are no pending proceedings, on the questions raised by the applicant.

6.1 We have gone through the facts of the case, oral and written submissions made by the applicant as well as the Jurisdictional Officer and the applicable provision of the GST Laws in this regard. The applicant is a Non-Banking financial company having its registered head office at Chennai and among its other financial services, is also involved in the business of leasing. The leasing business involves leasing of machinery, commercial vehicles and non-commercial vehicles. The applicant has sought ruling on the following question:

Whether the portion of the certain additional services viz., payment of road tax/registration fees, insurance premium, etc., rendered by the applicant in the course of its Leasing of the vehicle/s to the Lessee falls under the category of "services of a pure agent"?

Or

Whether the recovery of Motor Vehicle Registration fee, Motor Vehicle life Tax & RTO charges etc., by the applicant from the lessee for the registration of the vehicle in the name of the lessee forms part of the value of supply or the applicant is acting as a pure agent for this purpose and so the above charges do not form part of the taxable supply?

The above question relates to valuation of the supply made by the supplier of service and therefore is admissible under the statutory provisions governing Advance Ruling. Accordingly, the application is taken up for consideration on merits.

7.1 The applicant has stated that the Lessee/Customer approaches them with a request to extend leasing facility upon certain terms and conditions; the Lessee is the one who decides the make, model and class of assets required for his uses, including identification of the supplying dealer and approaches them for extending lease facility; once the lease terms are agreed, they both enter into the required lease agreement; the legal ownership of the Asset rests with them and the Lessee holds the same as a mere bailee of the Lessor; though the assets to be leased out by the applicant are billed by the vehicle dealer in the name of the applicant, the Lessee shall be solely responsible for taking

/obtaining delivery and possession of the same from the dealer in terms of the Master Lease agreement and supplemental lease agreement entered with them; the vehicle dealer (third party) raises a tax invoice for the vehicle on them which include the unit price for the vehicle after discount, if any, CGST @ 14% SGST @14%. plus compensation cess as may be applicable. A separate debit note is also raised by the vehicle dealer (third party) on the applicant (Lessor/Supplier of leasing facility) for the payment of registration fee and Motor vehicle life tax and RTO charges, accessories, fastag, TCS etc., As of now they calculate the monthly lease rentals based on the aggregate amounts released by them to the vehicle dealer as per the terms and conditions with the Lessee (recipient) on which they remit GST in the leasing transaction at the appropriate rates. They have stated that the registration and motor vehicle life tax and RTO charges, insurance premium etc., are actuals paid by them to the vehicle dealer (third party) to enable the vehicle to get registered for use by the lessee. The contention of the applicant is that since the Lessee is the actual user of the vehicle and at whose request the vehicle has been purchased by them for the purpose of providing it on lease, they should be treated as a **"Pure Agent"** in terms of Rule-33 of CGST Rules in respect of payments made by them towards such additional services viz., registration and motor vehicle life tax & RTO charges, insurance premium etc., and thereafter get it reimbursed from the Lessee (recipient) on actual basis.

7.2 From the submissions of the applicant, it is seen that they enter into a Master Agreement for 'operating lease' with their lessee outlining the terms and conditions for such operating lease to be extended by them to the lessee. It is also seen that the applicant enters into supplemental Operating Lease agreement when the Lessee approaches them to lease a desired vehicle wherein the terms and conditions of the Master Agreement are referred and agreed to be adopted. Thus, it is evident that the applicant extends the services of 'Operating Lease' to the Lessee. A careful reading of some of the following clauses of the agreement reveals that the ownership of the leased equipment does not pass on to the Lessee and remains with the Applicant, as is the dicta of an "Operating Lease". The relevant clause are extracted as under:

Clause No. 6. There shall be affixed permanently to the equipment, or part thereof at a conspicuous place and at the lessee's expenses, a name

plate, serial number or a mark to identify the same as the exclusive and absolute property of the Lessor. The Lessee shall ensure that the said name plate, serial number or mark are not removed/obliterated/defaced.

Clause No.8: The Lessee acknowledge, confirms and declares that it holds Equipment as a mere bailee of the Lessor and that it shall not have any proprietary right, title, or interest in the equipment or any part thereof and shall at all times, protect and defend as bailee/licencee of the equipment the Lessor's absolute and permanent ownership right and title. The Lessee further agrees and covenants that he shall not claim any benefits under the Tax Laws associated with the ownership of the equipment such as depreciation, investment allowances etc.,

Clause 13 (b): The Lessor shall be entitled to claim, receive, recover and retain to the exclusion of the Lessee and without prejudice to and/or divesting itself of its absolute proprietary right, title and interest in the equipment and/or in the salvage thereof, all moneys realizable in respect of the said claims.

Clause 15. The Lessee shall not make or cause to be make any alteration or additions, improvements to the equipment or any of them or in its normal use without the prior written consent of the Lessor. All additions/accretions/improvements/attachments made by the Lessee to the equipment or any of them whether with or without such consent shall form an integral part thereof and be the property of the Lessor subject to the terms and conditions herein contained.

Clause 23: If the Equipment requires registration under the Motor Vehicles Act, 1939, then the Lessor permits the Lessee to have such registration in its, (Lessee's) name for the benefit of the Lessor and expressly subject to the absolute ownership rights of the Lessor thereon and the Lessee undertakes to have the said registration transferred in the name of the Lessor on the termination of the Lease or on the Lessor retaking and resuming possession thereof for whatsoever reason at any time during the lease period or whenever required to do so.

7.3 From a conjoint reading of the above clauses of the agreement and the various submissions such as Tax Invoices, Debit Notes raised by the Vehicle Dealer on them and the Tax Invoice raised by the applicant on the lessee for the EMI, we find that

- the activity of applicant is leasing vehicles under 'Operational Lease' to the lessee;

- applicant is the owner of the vehicles leased to the lessee and the base price of the vehicle along with the On-road component charges is capitalized in the Books of Accounts of the applicant;
- Vehicle dealer raises the Tax Invoice and the Debit note for the on-road components on the applicant;
- EMI is calculated considering the entire value including the on-road components charged on them;
- The applicant as agreed upon with the lessee, has permitted the lessee to register the vehicle in the name of the lessee with the endorsement of the ownership to be with lessor and on the undertaking of the lessee to transfer the registration in the name of the lessor, whenever required to do so [Clause 23 of the Master Agreement]

7.4 Operational leasing is a taxable supply of service under the GST Act. From the flow chart indicating the leasing supplies, it is seen that presently, the applicant arrives at the EMI considering the entire value including the on-road components charged on them and the lease rental is fixed on monthly basis. The applicant contends that he is to be considered as 'Pure agent' in respect of the 'On-road component' paid by them, in as much as the vehicle is registered in the name of the lessee as per the terms and conditions agreed upon. It is their stand that, if such a scenario is permitted the On-road component, currently considered as part of the entire value of the leasing service, amortised and EMI fixed will be reworked excluding the 'On-road Component'. It is their further contention that the 'On-road Components', wherever required are subjected to GST and therefore when these components form part of the leasing services, it is again taxed.

8.1 Section 15 of the GST Act, provides the statutory provisions relating to Valuation of Supply of Goods and Services which is reproduced as under:

(1): The value of supply of goods or services or both shall be transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

- (a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) *Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services both;*
- (c) *Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
- (d) *Interest or late fee or penalty for delayed payment of any consideration for any supply; and*
- (e) *Subsidies directly linked to the price excluding subsidies provided by the Central and State Governments.*

8.2 As per Section 15 above, the value of a supply, where the supplier and the recipient are not related and the price is the sole consideration, is the transaction value, which is the price actually paid or payable for the said supply. In the case at hand, the applicant purchases the vehicle identified by the lessee from the dealer also identified by the lessee and supplies the vehicle as 'Operational lease'. The supply under consideration in the instant case, is the supply of the vehicle by the dealer to the applicant. The dealer and the applicant are not related persons and therefore the consideration charged by the dealer for the supply of the vehicle to the applicant is the 'Transaction Value' for the purposes of GST. From the submissions, it is seen that the Dealer raises a 'Tax Invoice' towards the basic price of the vehicle with the applicable GST levies and a 'Debit Note' towards the 'On-road Component' comprising of Registration charges, road tax, etc. The question before us is whether the 'On-road Component' raised through a Debit note to be considered as additional services in which the applicant is a 'Pure agent' or should form part of the value of supply of 'Operational lease' undertaken by them.

8.3 Rule 33 of the GST Rules 2017 provides the value of supply of services in case of pure agent which is as under:

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 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.*

8.4 As per the above Rule 33, the cost incurred by a supplier as a 'Pure agent' can be excluded, when

- Such payment is made to the third party on authorization by such recipient;
- Such payment is indicated separately in the invoice raised by the recipient;

- The supplies received as pure agent is in addition to the supply procured by the supplier for his own account supplies.

Payment of On-road components such as registration fees, Insurance fees etc., are mandatory for the vehicle to be able to be used on road, as per the provisions of Motor Vehicles Act. Section 39 of The Motor Vehicles Act, 1988 provides as under:

39. Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner

and Section 146 of the Motor Vehicles Act, 1988 provides as under:

146. Necessity for insurance against third party risk.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

In the case at hand, the vehicle is given on 'Operating lease', wherein the ownership of the vehicle is held by the applicant and through the terms and conditions for the leasing transactions, the applicant has permitted the lessee to register the vehicle in the name of the lessee. The fact that the vehicle is allowed to be registered in the name of the lessee does not alter the other fact that the applicant is the owner of the vehicle and the lessee is a mere bailee of the goods on account of the applicant. Making payment of registration fees, Road Tax, RTO charges and Insurance Premium (On-road components) to the dealer is the responsibility of the applicant and not lessee as the vehicle is owned by the applicant and not the lessee. The applicant is not paying these charges on behalf of the lessee to the dealer but is paying the charges to make the vehicle usable on road following the provisions of Motor Vehicle Act and related statutory provisions etc before leasing such vehicles to the lessee for operations.

8.5 Further, as per the Explanation to Rule 33 above, 'Pure agent' is a person, who has a contractual agreement with the recipient of supply to act as his agent; neither intends to or holds any title to the services supplied as pure

agent; does not use for his own interest such services so procured; receives only the actual amount incurred in addition to the amount received for supply on his own account. In the instant case, the applicant do not have any contractual agreement for separately procuring the 'On-road components'; the supply is leasing of the identified vehicle for operational purposes and the ownership of the vehicle and as owner, it is the responsibility of the applicant to register the Vehicle and to have the Insurance, etc as required under the various statutory provisions. Therefore, the 'On-road components' are procured for the interests of the applicant, as without these, the leased vehicle cannot be used on roads, the very purpose, the lessee leases such vehicles from the applicant. Thus, the applicant has failed to establish themselves as a 'pure agent' and therefore the expenditure or cost incurred by the applicant in respect of the 'On-road components' are incurred by them in the transaction of 'Purchase of vehicle' for the supply of 'Operational lease' to their recipient. In this connection, it is pertinent to note that section 15(2) of the GST Act, provides that any tax/duty levied under any other law and any incidental expenses incurred should also form a part of the 'Transaction Value'. Applying the same to the case at hand, the 'On-road components' are incidental charges incurred by the applicant in purchasing the vehicles for supply under the 'Operational lease' to the Lessee. Therefore, the value of 'On-road component' cannot be considered as additional charges or the applicant can't be held as acting as a 'Pure agent' in respect of supply of the 'On-road Component'.

8.6 A Verification of one of the Lease Agreement entered by the Applicant/ Lessor with their Lessee namely TV Sundaram Iyengar & Sons Pvt.Ltd., vide agreement No. YC5002HX dated 23-8-2017 reveals that the applicant is collecting monthly rent Rs.18875/- (Rupees eighteen thousand eight hundred and seventyfive only) per month from the Lessee under Option-I, currently followed. This monthly installment covers the Lease rent of the car as well the recovery of registration fees, RTO charges, and Insurance Premium. We find that the payment of the registration fees, RTO charges, and Insurance Premium, is mandatory to put the vehicle to use on road and therefore amounts paid towards such registration fees etc., by the applicant is a part of consideration received in relation to leasing of vehicles by the lessor (i.e.) the applicant.

9. To sum up, the applicant purchases the vehicles identified by the Lessee and extends the lease against the monthly rentals based on agreement entered with the lessee. The 'On-road component' which includes registration fees, insurance, etc are mandatory charges for the vehicle to be put to use. Though the applicant allows the vehicle to be registered in the name of the lessee with the endorsement of the lease, the 'On-road components' are procured on own account of the applicant, enabling the vehicle to be used on road and subsequent Lease. Therefore, the 'On-road Components' having the nature of incidental expenses in relation to leasing of vehicles cannot be considered as procured in the capacity of 'Pure Agent' by the applicant and are includible in the value of supply, to be considered as 'Transaction Value' for the purpose of Tax and taxable @ 28% along with applicable cess .

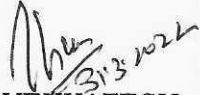
10. In view of the above, we rule as under:

RULING

1. The portion of the certain additional services viz., payment of road tax/registration fees, insurance premium, etc., rendered by the applicant in the course of its Leasing of the vehicle/s to the Lessee and recovered in monthly instalments do not fall under the category of "services of a pure agent" and therefore it is ruled that they are not an 'Pure **Agent**' under Explanation to the Rule 33 of CGST/TNGST Rules 2017.

2. Additional payments made by the Applicant towards Motor Vehicle Registration fee, Motor Vehicle life Tax, RTO charges etc., for getting the vehicle to use on the Road, which are recovered from the Lessee, forms part of the supply of Leasing services and therefore should form part of the taxable supply.


K. LATHA
Member (SGST)


T.G.VENKATESH
Member (CGST)



To

M/s. Sundaram Finance Limited,
21, Patullos Road, Ground Floor,
Taxation Department,
Chennai 600 002.

/BY SPEED POST WITH ACK.DUE/

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
IInd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Chennai (North)
Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.
4. Assistant Commissioner (ST) Annasalai Assessment Circle,
No.1, PAPJM 4th Floor, Annexure Building, Greams Road,
Chennai – 600 006.
5. Master/Spare.

