THE MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017 Circulars and Advance Ruling

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Body

AUTHORITY FOR ADVANCE RULING No. GST-ARA-60/2020-21/B-69, Dated 25th May, 2022

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010,

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.		AD271220012682L
GSTIN Number, if any/ User-id		27AANCM2659M1ZR
Legal Name of Applicant		M/s. MH Ecolife E-Mobility Pvt. Ltd.
Registered Address/Address provided while obtaining user id		Sector 20,C/O NMMT City Bus Depot, Turbhe, Navi Mumbai, Maharashtra, 400705
Details of application		GST-ARA, Application No. 60 Dated 23.12.2020
Concerned officer		Commisionerate- Belapur, Division-Ill, RANGE-HI.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)(As per applicant)	Applicant has an Operator Agreement with NMMT wherein they shall supply, operate & maintain electrically operated AC buses to be plied on routes identified by NMMT.
issue/s on which advance ruling required		> Admissibility of input tax credit of tax paid or deemed to have been paid > Determination of the liability to pay tax on any goods or services or both
Question on which advance ruling required		As reproduced in of the Order/ Proceedings below

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and

the Maharashtra Goods and Services Tax Act, 2017)

1.An application, for Advance Ruling was filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. MH Ecolife E-Mobility Pvt. Ltd., the applicant, seeking an advance ruling in respect of certain questions as discussed in subsequent paras. The application was decided by this office as per Order no. 60/2020-21/B-116 dated 21/12/2021. Later, it was noticed that a circular dated 6/10/2021 remained to be considered while passing the said order and the applicant had not pointed out the said circular at the time of final hearing in respect of the said order passed on 12/12/2021. Therefore, this office served the impugned notice (Notice bearing no. GST/ARA/2021-22/B-19 dated 15th February 2022) on the applicant and the case was fixed for hearing on 15/3/2022. The applicant requested for extension of the hearing date by one more month. Hence, case was fixed for final hearing again on 19/4/2022.

The impugned notice (which is the basis for the present hearing) issued to the applicant, contains all the facts, the relevant legal provisions and the reasons for issue of the said notice, reads as under:

Notice

(Under Section 102 & 104 of the Central Goods and Services Tax Act/

Maharashtra Goods and Services Tax Act, 2017)

It is noticed that the Advance Ruling Order was passed on 22/12/2021 as referred to above, in the present case. The said application was filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. MH Ecolife E-Mobility Pvt. Ltd the applicant, seeking an advance ruling in respect of the certain question and as per the said order dated 22/12/2021, answers were given to the said questions asked, as mentioned below.-

Question 1: Whether services provided by the applicant to NMMT under the Agreement, by way of supplying, operating and maintaining air-conditioned electrically operated buses are taxable and subject to GST?

Answer: Answered in the affirmative, as discussed above.

Question 2: If the answer to (i) above is yes, what will be appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant and applicable GST rate thereon ?

Answer: As discussed above, the appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant is Tariff Heading 9966. The rate of GST is 12% (with availment of ITC) or 5% (without availment of ITC), as discussed above.

Question 3: Whether Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement?

Answer: The Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement only if they pay tax @ of 12% on output service, as discussed above.

It was noticed that a very similar issue was involved in the case of M/s. M P Enterprises & Associates Limited, Advance Ruling No. GST-ARA 37/2020-21/B-16, dated 14 June 2021, which is decided by this Authority as per the said order dated 14/6/2021 and mainly based on the said decision given in the case of M/s MP Enterprises, the decision in the case of present applicant is taken. It is mentioned in para 5.5 of the said order dated 22/12/2021 (in the case of present applicant) that "From a perusal of the subject agreement we find that, the facts in the case of M/s M.P. Enterprises & Associates Limited and the present case are identical in nature and terms of underlying contracts are also similar." So, it was mainly due to the decision in the case of M/s MP Enterprises (cited supra), the decision in the present matter is taken. It is further noticed that after the decision in the case of M/s M.P. Enterprises, a circular no. 164/20/2021-GST dated 6/10/2021 is issued by the CBIC, Govt of India. On page 4, para 8 of the said circular it is mentioned as under:

"8. Renting of vehicles to State Transport Undertakings and Local Authorities

8.1Representations 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 passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers".

8.2 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.

8.3It 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]

8.4The issue was placed before the 45th 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."

The hearing in the present case is concluded on 7/12/2021. During the course of hearing, above circular dated 6/10/2021 was not pointed out. It is noticed that decision in the present case is delivered without considering the said circular. It is, therefore, necessary to reconsider the decision given in the present case, particularly in the light of the provisions in the said Trade Circular. This might lead to different answers than the answers already given to the questions asked in the present case. It is, therefore, necessary to given a fresh hearing in the present case. In this respect, the applicant is requested to refer to following provisions of the GST Act.-

"102. The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard."

"104. (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant. Explanation.-The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be

excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.
(2)A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.
Thus the applicant and the concerned jurisdiction officer are hereby directed to submit their respective written submissions (on or before the date fixed for hearing) and attend the hearing on the present Notice on 15/03/2022. The applicant is directed to show cause as to why the decision given in the present case dated 22/12/2021 should not be withdrawn. The link for attending the hearing online shall be shared separately."

2.The hearing, in respect of the impugned notice was conducted on 19/4/2022. The applicant, as well as the Jurisdiction officer filed the detailed submissions in response to said notice. The Authorised representative of the applicant, Shri Niraj Hande, Advocate, Shri Sharad Gupta, Shri Rahul Deep Pandya, DGM, Shri Shatrughna Goswami, DM, were present. Jurisdictional Officer Shri Ganesh Jadhav, Superintendent Divisional III, Commissionerate Belapur was also present. The applicant filed a detailed reply which reads as under:

"Ref: 1) Notice bearing no. GST/ARA/2021-22/B-19 dated 15th February 2022 ("Notice")
2)Order no. GST-ARA-60/2020-21/B-116 dated 22nd December 2021 of this Hon'ble Maharashtra Authority of Advance Ruling ("Ruling"/ "Order")
2)Advance Ruling Application no. 60 dated 23 December 2020 filed by M/s. MH Ecolife E-Mobility Pvt. Ltd. ("Application")

Sub: Response to Notice

We are in receipt of the captioned notice in terms of which we have been asked to show cause as to why the Order dated 22.12.2021 should not be withdrawn, on account of the allegations levelled in the captioned Notice.

Facts & Background:

>MH Ecolife E-Mobility Pvt. Ltd. (hereinafter referred to as "the Applicant" or "Company" or "Operator") is a Company incorporated under the provisions of Companies Act, 2019. The Company is registered for GST vide registration number 27AANCM2659M1ZR and has its principal place of business at Sector 20, C/o. NMMT City Bus Depot, Turbhe, Besides Turbhe Railway Station, Navi Mumbai, Thane, Maharashtra, 400705.

> The Company had entered into Operator Agreement dated 25.02.2020 with the Navi Mumbai Transport Undertaking (hereinafter referred to as "NMMT"). In terms of the Agreement, the Company was responsible to procure and supply air-conditioned electric buses to NMMT on gross contract basis which will be plied on the routes identified by NMMT. During the term of the Agreement, the ownership of the buses as well as responsibility of maintenance of the buses remained vested with the Company.

> The Company had on 19.12.2020 filed an application seeking an advance ruling under Section 97 of the Central Goods and Services tax Act, 2017, to determine the appropriate classification of these service along with taxability thereof. The said application was filed in Form GST ARA 01 and was accompanied by:

- Annexure A which set out the "Statement of relevant facts having a bearing on the question(s) raised"; and
- Annexure B which set out the "Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s)"

> The Ruling in respect of the Company's Application was delivered vide Order dated 22.12.2021 which ruled that the services of the Company were classifiable under SI. No. 10(i) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 ("Rate Notification") which covered the services of "Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.". Further, it was held that (SI. No. 22 of) Notification No. 12/2017-Central Tax Rate dated 28.06.2017 was not applicable. The operative portion of the order is reproduced below:

"5.2 In the case of transportation of passengers, the recipient of service would be the passenger whereas in the case of renting of any motor vehicle, the recipient would not be the passenger. In the present case, the consideration for supply of service is charged from NMMT and not the passenger. Therefore, in the subject case it is clear that the recipient of service is NMMT. Hence, we have no hesitation in holding that the subject activity, amounts to 'renting of motor vehicle' and shall qualify as a taxable activity under the provisions of the GST Laws. Since the subject activity is taxable, the provisions of Notification No. 12/2017-CT (R) dated 28.06.2017 is not applicable in the subject case. The subject case is clearly covered by Entry Sr. No. 10 of Notification No. 11/2017 - CT (Rate) dated 28.06.2017 as amended in as much as there is a Rental services of transport vehicles with or without operators and the activities of Renting of any motor vehicle/transport vehicle which is designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient are chargeable to either 2.5% GST or 12% GST depending on availment of Input Tax Credit....

5.3 Thus, the service of operating AC buses by the applicant for NMMT would be subject to GST @12% under Tariff Heading 9966 i.e. 'renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient' inserted by way of Notification No.31/2017 dated 13.10.2017 (Amended Notification No.11/ 2017-CT(R) dated 28.06.2017) wherein the applicant is eligible to claim set off, as discussed above, on its outward supplies, as provided in the above notification."

> Pursuant to this Ruling, the Company has started levying GST at the rate of 12% on the invoices raised to NMMT and has availed input tax credit ("ITC") on its eligible inward supplies. It is noteworthy that such amounts pertaining to GST, while having not been remitted to it by the NMMT, have been paid by the Company into the Government treasury in line with the applicable time of supply provisions and through utilization of the ITC which was availed by it in terms of the Ruling.

Present Notice

However, the Company is now in receipt of the captioned Notice which has been issued under section 102 and section 104 of the CGST Act. The Notice requires the Company to show cause as to why the decision given in the vide Order dated 22.12.2021 should not be withdrawn and alleges

as below:
The hearing in the present case is concluded on 7/12/2021. During the course of hearing, above circular dated 6/10/2021 was not pointed out. It is noticed that decision in the present case is delivered without considering the said circular. It is, therefore, necessary to reconsider the decision given in the present case, particularly in the light of the provisions in the said Trade Circular. This might lead to different answers than the answers already given to the questions asked in the present case. It is, therefore, necessary to given a fresh hearing in the present case. In this respect, the applicant is requested to refer to following provisions of the GST Act."

> The relevant portions of Sections 102 and 104 of the CGST Act are reproduced below for ease of reference:

"SECTION 102. Rectification of advance ruling.- The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or section 101C, respectively, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, appellant, the Authority or the Appellate Authority within a period of six months from the date of the order...:

"SECTION 104. Advance ruling to be void in certain circumstances.- (1) Where the Authority or the Appellate Authority [or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 [or under section 101C] has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made"

Our submissions to the allegations set out in the Notice are covered in the below paragraphs, each of which are taken without prejudice to each other.

SUBMISSIONS

Section 104 of the CGST Act is not applicable in the present facts since there has not been any suppression or misrepresentation of facts by the Company

> In terms of Section 104 of the CGST Act, an advance ruling is considered to be void ab-initio only if the same was obtained by fraud or suppression of material facts or misrepresentation of facts. In the present case, the Notice alleges that there has been "suppression" on account of the fact that the Company had not pointed out the Circular during the course of the hearing.

> In this regard, it is submitted that the Company, has at all times, provided a true and complete account of all functioning of its business and the nature of services provided to NMMT under the Operator Agreement. A failure to inform the Authority of the Circular No. 164/20/2021-GST dated 06.10.2021, which is in effect not a fact" but a clarification on the scope of entry 22 of notification No. 12/2017-CT(R) and essentially is the "law" applicable, cannot be termed to be "suppression of facts". In fact, if the Company had missed out on mentioning about the said circular, the departmental representative was duty-bound to make this Hon'ble Authority aware of the Circular. Therefore, and since the Company has at all times clearly set out the applicable facts of its case, its transaction with NMMT as also the nature of activities undertaken, no facts have been either suppressed or misrepresented by the Company.

> In any case, and for sake of argumentation, even if the Circular is considered to be akin to "fact", mere a mission to mention the Circular before the Authority cannot be termed to be "suppression or misrepresentation of fact". It needs to be appreciated that the Circular is not something which is exclusively within the knowledge of the Company and the Departmental representative does not have access to such information. Hence, non-mentioning of a Circular which is available in public domain and non-mentioning of the circular cannot amount to suppression of facts by any stretch of imagination. Reliance in this regard is placed on various judgments of the Hon'ble Supreme Court and High Courts which while interpreting the provisions of Section 11A of the Central Excise Act, 1944, has eloquently set out the scope of the words "suppression" and "misrepresentation" of facts.

> Continental Foundation Joint Venture vs. Commissioner of Central Excise [2007 (216) E.L.T. 177 (S.C.)]

"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression...."

o Bharat Hotels Limited Vs. Commissioner, Central Excise [2018 (2) TMI23]

"the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uniworth (supra), "misstatement or suppression of facts" does not mean any omission. It must be deliberate. In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid paying excise duty."

> Hence, the allegation that the Company has suppressed any material facts or misrepresented them is devoid of any basis in law and such allegation needs to be dropped.

The Authority cannot seek to "review" its order under the garb of "rectification of mistake" proceedings

> Section 102 of the CGST Act empowers the Authority to amend the Ruling previously pronounced by it only in cases of an "error apparent on record". This term is no longer res integra and scope of the power of an authority under proceedings for rectification of a mistake have been

extensively analyzed and deliberated upon. The Hon'ble Supreme Court in Commissioner of Central Excise vs. A.S.C.U. Ltd. [2003 (151) ELT481 (S.C.)] has held that "mistake apparent from the record cannot be something which would have to be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions".

> In the Present case, the reasoning as to whether the Circular applies in the facts of the Company or not is something which would require a long-drawn process of reasoning, and would require Extensive arguments. It is a well settled principle in law that under the garb of rectification of mistake proceedings, the original order should not be obliterated and substituted, which would effectively amount to "review" of the order earlier passed. Reliance is inter alia placed on the judgement of the Hon'ble Supreme Court:

> Thungabhadra Industries Ltd, vs. The Government of Andhra Pradesh [1964 5 SCR 17]:

"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

> Satyanarayan Laxminarayan Heqde v. Mallikarjun Bhavanappa Tiruymale [19601 SCR 890]

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

> Deva Metal Powders Pvt. Ltd, vs. Commissioner, Trade Tax, U.P. (04.12.2007 - SC) : MA NU/SC/8166/2007

"A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and it is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectifications"

> The above binding precedents of the Hon'ble Supreme Court clearly lay down the principle that the applicability or non-applicability of the Circular to the facts of the Company is not a process which can be undertaken under the garb of proceedings for 'rectification of mistake'. Doing such an act would essentially amount to the Authority seeking to usurp the powers of the Appellate Authority, which is entrusted with reviewing the order passed by the Authority.

> In the present case, and if it is the case of the Tax Department that the said Circular applies to the facts of the Company, the appropriate manner of challenging the Order would be by appealing against the same and not through proceedings for rectification of mistake under Section 102 of the CGST Act.

It is a settled proposition, in terms of the judgment of the Hon'ble Bombay High Court in Syska LED Lights Pvt. Ltd. vs. Union of India [2021 (377) E.L.T. 33 (Bom.)] that when law requires a thing to be done in a particular manner, it has to be done in prescribed manner and proceeding in any other manner is necessarily forbidden.

> Given the above, the lacuna in the captioned Order of not considering the Circular issued and applicability of the same to the facts of the Company (which would require a long drawn process of arguments and submissions) cannot be cured by proceedings under Section 102 of the CGST Act and would necessarily need to be taken up in appeal proceedings.

Conclusion

> In view of the above, it is established that:

- There is no suppression or misrepresentation of facts by the Company to render the captioned Ruling as being void ab-initio in terms of Section 104 of the CGST Act.
- The non-referral of the Circular and its applicability to the facts of the Company cannot be sought to be rectified under Section 102 as the same would require a long drawn process of arguments and submissions.

> We request your goodself to accept the above and refrain from altering the view pronounced in the captioned Ruling.

> The Company reserves all of its legal rights, including the right to make submissions on the applicability / non-applicability of the Circular to its facts and right of personal hearing, in case this Authority seeks to adopt a view other than that set out in the captioned Ruling.

> Without prejudice to the above, in case the Authority seeks to adopt a view other than that set out in the captioned ruling, the Authority also needs to give heed to the consequential situation which may arise because of such other view and may cast civil liability in the form of interest etc. on the Company, especially given that the such ITC either remains unutilized, or paid on services on which no GST should have been paid (and has not been collected from any other person). It needs to be appreciated that that imposition of any such civil liability would amount to penalizing the Company without any fault of its own and exclusively due to complying with the captioned Ruling. Accordingly, the Authority would also be required to give relief from such civil liability, should the Authority seeks to adopt a different view than set out in the captioned ruling."

03. CONTENTION - AS PER THE CONCERNED OFFICER:

Officer Submission dated 17.03.2022- MH Ecolife reads under:

3.1The jurisdictional officer, while reproducing the contents of Circular no. 164/20/2021-GST dtd. 06-10-2021(C/s. 21-33) has submitted that, the

decision taken earlier as per order dated 21/12/2021 needs to be changed. The impugned service is exempt from tax and the applicant is not entitled to ITC.

04. HEARING

4.1The hearing was conducted on 19/4/2022 as per the details mentioned in above paras. The Authorized Representatives and the jurisdiction officer made oral and written submissions as mentioned in above paras.

05. OBSERVATIONS AND FINDINGS:

5.1It was noticed at the time of final hearing of original order (dated 22/12/2021) passed in present case that a very similar issue which was involved in the case of M/s. M P Enterprises & Associates Limited, Advance Ruling No. GST-ARA 37/2020-21/B-16, dated 14 June 2021, was decided by this Authority as per the said order dated 14/6/2021. And mainly based on the said decision given in the case of M/s MP Enterprises, the decision in the case of present applicant was taken. It was further noticed that, after the decision in the above mentioned case of M/s M.P. Enterprises, a Circular no. 164/20/2021-GST dated 6/10/2021 was issued by the CBIC, Govt of India in view of Representations having 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 Sr. No. 22 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which exempts "services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers".

The said Circular has 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."

5.2The final hearing in respect of the above mentioned application of the applicant was concluded on 7/12/2021. During the course of hearing, the above circular dated 6/10/2021 was not pointed out by the applicant. It is noticed that the decision in the present case is delivered without considering the said circular. It is, therefore, necessary to rectify the decision given in the present case, particularly in the light of the provisions in the said Trade Circular. Non consideration of material provisions is a mistake of law. Not pointing out the relevant circular during the course of hearing or in the written submissions filed earlier is also a suppression of a material event. Hence, there was a necessity of application of Sec 102 and 104 in the present case. This could lead to different answers than the answers already given to the questions asked in the present case It was therefore felt necessary to given a fresh hearing in the present case and accordingly, fresh hearing was conducted on 19/4/2022. In this respect, the applicant was requested to refer to the following provisions of the GST Act.-

"102. The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard."

"104. (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant. Explanation.- The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2)A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

5.3Thus in view of powers under above provisions, this authority is empowered to take decision as per law, after affording opportunity of hearing to the applicant. In response to the notice for the hearing to be held on 15.03.2022, the applicant sought further date of one month which was granted Hence, sufficient time has been granted to the applicant to put forth their case. The applicant has failed to prove how the provisions of the said circular (cited supra) are not applicable to the facts of the case of the applicant.

In fact, the applicant has not argued the case on merits in view of the provisions of the circular mentioned above and had also not brought out the fact that the said Circular was in existence during the earlier hearing which led to the issuance of Order No. 60/2020-21/B-116 dated 21/12/2021. The arguments were made by the Authorised representatives only on non applicability of Sections 102 and 104 to their case which are not at all acceptable in view of the relevant GST provisions.

5.4In their reply, the applicant has relied upon certain case laws. The case laws relied upon by the applicant, can be distinguished on facts as well as on legal provisions. Further, none of the decisions under the referred case laws have been taken under the impugned provisions of the GST Act on the basis of which the present hearing was conducted. The applicant has failed mainly to prove how the provisions of the impugned Circular are not applicable to the facts of the present case. The applicant has contested the present hearing mainly on the following two grounds as mentioned in its written submission in the form of conclusion by the applicant, which reads as under:

o There is no suppression or misrepresentation of facts by the Company to render the captioned Ruling as being void ab-initio in terms of Section 104 of the CGST Act.

o The non-referral of the Circular and its applicability to the facts of the Company cannot be sought to be rectified under Section 102 as the same would require a long drawn process of arguments and submissions.

5.5Thus there is no denial by the applicant that provisions of said circular are not applicable to the facts of present case. The applicant has nowhere explained that on facts, provisions of said circular are not applicable in present case. On the contrary, this is indirect admission by the applicant that the provisions of the said circular are very much applicable to the facts of the present case. Thus, the decision given earlier cannot be said to be founded on sound legal footing. Hence, the above mentioned provisions of the GST Laws come into play.

5.6This Authority directs the applicant to follow the provisions of the circular which is of prior date than the date of the decision of this Authority in the earlier ARA order dated 21.12.2021. The grounds raised during present hearing by the applicant are merely and purely of technical nature and in substance the facts of the present case warrant application of the said circular. The technical objections are also not founded on sound principles of law because, if one reads the texts of above sections, under which present order is being passed, a reasonable mind will come to conclusion that there is no merit in the objections taken by the applicant. Hence, answers to the questions are required to be modified as per the views put forth by the CBIC in the impugned Circular.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 102 & 104 of the Central Goods and Services Tax Act/
Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1: Whether services provided by the applicant to NMMT under the Agreement, by way of supplying, operating and maintaining air-conditioned electrically operated buses are taxable and subject to GST?

Answer: Answered in the negative. It is exempt supply as mentioned in the circular referred to and discussed above.

Question 2: If the answer to (i) above is yes, what will be appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant and applicable GST rate thereon?

Answer: Not answered, in view of the answer given to question no.I above.

Question 3: Whether Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement?

Answer: Answered in the negative, in view of the fact that basic supply itself is an exempt supply and not liable to tax.

PLACE:- Mumbai

DATE:- 25/05/2022

RAJIV MAGOO	T. R. RAMNANI
(MEMBER)	(MEMBER)

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai - 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

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