

Whether the pallets, crates and containers leased by CHEP India Private Limited located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 HELD BY AAR Answered in Affirmative (2) If the answer to Question is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 read with relevant Rules? HELD BY AAR the value on which GST has to be charged would be the lease charges which would be charged by the other branch to the ultimate customer in other state in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules, or such other normal value which would be derived after taking into consideration the rate which is equal to such lease rate which is normally charged to customers. HELD BY AAAR The value declared in the invoice issued by the appellant would be the value on which GST has to be charged in terms of Section 15 of the CGST Act, 2017 read with second proviso to Rule 28 of the CGST Rules. 2017 Question-3:- What are the documents that should accompany the movement of the goods from CIPL, Maharashtra to CIPL, Karnataka? HELD BY AAR Not admitted. HELD BY AAAR The aforesaid question cannot be answered as the same is not covered within the ambit of advance ruling in terms of section 97 of the CGST Act, 2017 Question-4:- Whether movement of leased equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST? HELD BY AAR Not answered in view of discussion made above. HELD BY AAAR Movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra cannot be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act, 2017 as the said transaction would fall under the ambit of supply of services in terms of section 7 of the CGST Act, 2017. The said supply of services involved in the transaction under question is being provided by CIPL Karnataka to CLPL Maharashtra in the capacity of bailee of CIPL Maharashtra for which CIPL Karnataka is charging facilitation fee along with applicable GST from the Appellant, i.e., CIPL Maharashtra as per the Inter-unit Memorandum of Understanding entered between the Appellant and other state units. It is further clarified here that the said movement of goods from CIPL Karnataka to CIPL Tamil Nadu as per the instruction received from CIPL Maharashtra, the owner of goods, will again be treated as supply of lease rental services by CIPL Maharashtra to CIPL Tamil Nadu as ruled by the MAAR Question-5:- With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Karnataka to CIPL, Tamil Nadu? HELD BY AAR Not admitted. HELD BY AAAR The aforesaid question cannot be answered as the same is not covered within the ambit of advance ruling in terms of Section 97 of the CGST Act 2017

APPELLATE AUTHORITY FOR ADVANCE RULING ORDER NO. MAH/AAAR/DS-RM/02/2023-24,
Dated, 5th June, 2023

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING

UNDER GOODS AND SERVICES TAX (GST)

(constituted u/s 99 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Dr. D.K. Srinivas, MEMBER (Central Tax)

(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s CHEP India Private Limited. 3rd Floor, Aver Plaza. Plot - B13, Opposite Citi Mall, New Link Road. Andheri (West). Mumbai - 400 053
GSTIN Number:	27AADCC3230AIZF
Clause(s) of Section 97, under which the question(s) raised:	Section 97 (c) & (g).
Date of Personal Hearing:	21.03.2023

Present for the Appellant:	(i) Shri. Sachin Agarwal. CA (ii) Shri. Sarvesh Saraogi.CA
Details of appeal:	Appeal No. MAH/GST-AAAR/11/2022-23 dated 06.01.2023 against Advance Ruling No. GST-ARA-82/2020-21 /B-111 dated 01.12.2022.
Jurisdictional Officer:	Range-L Division-III, CGST & C. Ex. Mumbai West.

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

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is made in respect of such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "CGST Act" and "MGST Act"] by Ms. CHEP India Private Limited, situated at 3rd Floor. Aver Plaza. Plot — B13, Opposite Citi Mall. New Link Road. Andheri (West). Mumbai - 400 053. ("hereinafter referred to as "Appellant") against the Advance Ruling No. GST-ARA-82/2020-21/B-111 dated 01.12.2022, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as "MAAR").

BRIEF FACTS OF THE CASE

3. CHEP India Private Limited (hereinafter referred to as "the Appellant", 'CIPL' or 'the Company') is a company registered under the provisions of Companies Act, 1956 and has its registered office situated at 3rd Floor, Aver Plaza. Plot - B13, Opposite Citi Mall, New Link Road, Andheri (West), Mumbai - 400 053. The Company is engaged in the business of leasing of pallets, crates and containers and is registered under the GST law-bearing registration number - 27AADCC3230A1ZF.

4. CIPL is contemplating certain changes in its existing business model. The broad business mechanics of the proposed business model would be as follows:

a. CIPL would be consolidating the ownership of all the equipment into the state of Maharashtra. Currently, while majority of the procurements / manufacture happen in Maharashtra, some of the procurements are also done from other states.

b. As the ownership of equipment would be with CIPL, Maharashtra, it would be entering into the arrangement with the customers and with all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges.

c. CIPL, Maharashtra would thereafter lease the equipment to its other CIPL units based on their demand requirement. CIPL, Maharashtra would be sending the equipment to the other unit of CIPL (Say CIPL, Karnataka) under the cover of the deliver)' challan. CIPL, Maharashtra would be raising periodical invoices for lease charges (based on number of days of usage) to CIPL, Karnataka.

d. CIPL, Karnataka would thereafter be issuing the equipment to its customers who would be using it for movement of their goods through the supply chain. CIPL, Karnataka would be charging the lease charges to its customers based on the period for which the equipment would be used by the customers.

e. Also, there are chances that other units of CIPL, (Say CIPL, Tamil Nadu) may require certain equipment from CIPL Maharashtra which are available with CIPL.Karnataka (under lease from CIPL Maharashtra).In such a case, on the basis of instructions from CIPL, Maharashtra. CIPL, Karnataka would transfer the equipment to CIPL, Tamil Nadu. In such a case, the moment equipment reaches CIPL Ianiil Nadu. CIPL, Maharashtra would stop charging CIPL, Karnataka and start charging CIPL, Tamil Nadu towards lease charges (basis number of days of usage). Further, CIPL, Karnataka would charge CIPL, Maharashtra a consideration for facilitation / arrangement of movement of equipment to CIPL, Tamil Nadu basis the instruction.

5. In light of the above facts and in terms of the provisions of Section 97 of Central Goods & Services tax

Act, 2017 ("CGST Act"), the Company had filed an advance ruling application on the GST common portal on 17 March 2021 bearing ARN no. AD270321032563G wherein the following questions were raised by the Appellant:

Question 1 - Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by the Appellant located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Maharashtra Goods and Services Tax Act, 2017 ("MGST Act")?

Question 2 - If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

Question 3 - What are the documents that should accompany the movement of the goods from CIPL Maharashtra to CIPL Karnataka?

Question 4 - Whether movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?

Question 5 - With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL Karnataka to CIPL Tamil Nadu?

6. A preliminary hearing opportunity for the aforesaid application was granted to the Appellant post which it was held that questions 3 and 5 cannot be admitted by the Authorities since the same relate to documentation and is thus, beyond the powers of Advance Ruling Authorities. Apart from the said two questions, other questions were admitted by the Authorities.

7. Subsequently, a final hearing opportunity with respect to the admitted questions took place on 14 June 2022 and 15 November 2022 wherein detailed submissions were made by the Appellant on their interpretation on the questions asked. Additional submissions, as required by the Authorities were also made by the Appellant.

8. Post the aforesaid final hearing, order no. GST-ARA-82/2020-21/B-111 dated 01 December 2021 has passed wherein the following is held for the questions admitted:

Question 1 - The transaction between CIPL Maharashtra and CIPL other locations may be treated as supply of leasing services.

Question 2 - Value on which GST is to be charged should be the value which is charged by the recipient branch to the ultimate customer in the other State or such other normal value which would be derived after taking into consideration the rate which is equal to such rate which is normally charged to customers

Question 4 The sites of the transaction in question is not within the State of Maharashtra and hence, the Authority does not have jurisdiction over the transaction

9. Aggrieved by the ruling rendered by the Authorities with respect to Question 2 and 4 above and by non-admission of Questions 3 and 5 above, the Appellant is filing the present appeal on the grounds mentioned below.

Grounds of Appeal

At the outset we would like to make it clear that the provisions of CGST Act and MGST Act are pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions a reference to the CGST Act would also mean reference to the corresponding similar provisions in the MGST Act.

10. Submissions with respect to Question 2

10.1. It is submitted that the Hon'ble Maharashtra Authority for Advance Ruling in the impugned order has held that the transaction between CIPL Maharashtra and other registrations shall be considered a supply

of leasing services, further, the value of supply of such leasing services by CIPL Maharashtra to other registrations should be the value which is charged by the recipient branch to the ultimate customer in the other State or such other normal value which would be derived after taking into consideration the rate which is equal to such rate which is normally charged to customers.

10.2. In this regard, the Appellant humbly wishes to state that the valuation mechanism suggested by the Hon'ble Advance Ruling Authorities is based on presumptions and surmises without having due regard to the applicable legal provisions of GST law. The valuation mechanism suggested is not derived according to the relevant valuation rules prescribed under GST and hence, cannot be adopted for valuing the underlying transaction in the present case.

10.3. It is submitted that since the transaction of leasing services in the present case is between different GSTINs of the same entity, the valuation shall be governed as per Rule 28 of the CGST Rules which deals with valuation in case of supply of goods or services between distinct person as specified in sub-section (4) and (5) of section 25 of the CGST Act or related persons.

10.4 According to the said rule 28, the value of supply shall be equal to the following value:

(a) be the open market value of such supply.

(b) if the open market value is not available be the value of supply of goods or services of like kind and quality

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

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

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

[Emphasis supplied]

10.5. From a plain reading of the second proviso to Rule 28, it is clear that in case of supply between distinct entities i.e. different GSTINs of the same entity, the invoice value shall be deemed to be the open market value or the transaction value for levy of GST where the recipient GSTIN is entitled to full input tax credit.

10.6. It is submitted that in the present case, CIPL Maharashtra would be entering into a Memorandum of Understanding (MoU) with other registrations of the Company (say, CIPL Karnataka) to provide equipment on lease basis for which the consideration would be charged at a rate agreed in the MoU determined on the basis of lease charges or rental per day depending on number of days of usage of equipment. Invoice in this regard would be raised by CIPL Maharashtra periodically on the other CIPL branches for the equipment taken on lease by them.

10.7. Since the recipient CIPL registrations would be eligible for full input tax credit, it is submitted that as per the proviso to Rule 28, the invoice value determined as above can be deemed as open market value or the transaction value for the purpose of GST levy. Accordingly, the valuation mechanism held by the Advance Ruling Authority is bad in law.

10.8. It is submitted that a similar valuation position has been taken by advance ruling authorities in other cases such as:

a. M/s BG Shirke Construction Technology Pvt. Ltd. [2021 (9) TMI 949 - Authority for Advance Ruling Maharashtra]

b. M/s Kansai Nerolac Paints Ltd. [2019 (6) TMI 1108 - Authority for Advance Ruling Maharashtra]

c. M/s Specsmaakers Opticians Private Limited (2020 (1) TMI 63 - Appellate Authority For Advance Ruling, Tamil Nadu).

10.9. Further, it is submitted that in the Appellant's own case and in similar fact pattern, the Advance Ruling Authority, Karnataka had held that in such scenarios, the invoice value adopted by the Appellant can be considered as the transaction value for the purpose of GST levy. The order is reported in [2021 (7) TMI 973] and is attached as Annexure 4 of this appeal for ease of reference.

10.10. The Appellant also wishes to submit that adoption of the mechanism suggested in the advance ruling mac not be commercial!} feasible for the entities due to the business dynamics and operations.

10.11. In view of the above, it is submitted that the ruling rendered by the Advance Ruling Authority is bad in law since it has not considered the applicable legal provisions and the precedents with respect to the said issue.

10.12. Hence, in terms of Section 101 of CGST Act. it is humbly prayed that the impugned order dated 01 December 2022 passed by the advance ruling authority be modified to the above extent for the ruling rendered for Question 2 in the advance ruling application.

11. Submission with respect to non-admission of Question 4

11.1. At the outset, it is submitted that post the preliminary hearing opportunity offered by the Advance Ruling Authorities. Question no. 4 was admitted by the Ld. Authority. However, the said question has not been answered by them on account of lack of jurisdiction. In this regard, it must be noted that once the question has been admitted by the Authority , it is understood that it is well within the jurisdiction and powers of the Authority under Section 97 of CGST Act to provide a ruling for the said question.

11.2. Further, it is submitted that in a similar fact pattern, in the Appellant's own case, the question was answered by the Advance Ruling Authority, Karnataka (supra).

11.3. In view of the above, it is prayed that the said question be examined on merits by the Appellate Advance Ruling Authority. The Appellant has herein provided the transaction mechanics and their interpretation for analysis:

a. Transaction mechanics: (Transaction with respect to leg (e) in the aforesaid diagrammatic representation) - The chronological sequence of the transaction is explained below for ease of understanding -

-- Initially, the equipment shall be leased out by the Applicant to the Company's GSTIN in another State say, CIPL Karnataka. The Applicant shall raise periodic tax invoice for lease charges on CIPL Karnataka along with appropriate GST (Step (b) and (c) of the aforesaid diagrammatic representation).

-- Let us assume that the ultimate customer in Karnataka ('XYZ as per the aforesaid diagrammatic representation) has completed the use of the equipment as per its requirement and after use, it has returned the same back to CIPL Karnataka. Now at this stage, the equipment is lying with CIPL Karnataka. Since CIPL Karnataka is still in the possession of the equipment, the Applicant shall continue to raise invoice for recoven of lease charges from CIPL Karnataka.

-- It may so happen that the Company's registration in another State (say, CIPL Tamil Nadu) requires the equipment which are lying with CIPL Karnataka. In such a scenario the Applicant i.e. CIPL Maharashtra shall enter into a lease arrangement with CIPL Tamil Nadu for the said equipment and instruct CIPL Karnataka to send the goods to CIPL Tamil Nadu.

-- It must be noted that the responsibility with respect to generating delivery challan, e-waybill etc. for the purpose of moving the equipment to CIPL Tamil Nadu shall be that of CIPL Karnataka and not the Applicant. For facilitating the movement of equipment, CIPL Karnataka may charge a consideration from the Applicant and raise a tax invoice along with GST for recovering the said amount.

-- Once the equipment reaches CIPL Tamil Nadu, the Applicant shall stop invoicing CIPL Karnataka for lease rentals and start invoicing CIPL Tamil Nadu for the lease charges on the basis of the new arrangement with it.

b. Appellant's interpretation:

-- The scope of supply under Section 7(1)(a) of CGST Act includes sale, transfer, exchange, license etc.

within its ambit. It must be noted that all forms of supply enumerated therein either involves vesting or divesting of rights or creation of an interest or right in property or a thing. Accordingly, in order to constitute supply, the person transferring the goods would be required to transfer its specified interest/right in property to the recipient of such goods.

– In the present case, the equipment owned by the Applicant is originally leased to CIPL Karnataka in pursuance of a lease agreement between such registrations. The equipment shall move to CIPL Tamil Nadu from CIPL Karnataka on the basis of instructions received from the Applicant. Such movement to CIPL Tamil Nadu is in incidence of the obligation as a lessee under the lease agreement entered between the Applicant and CIPL Karnataka. There is no transfer of interest of any kind in goods between CIPL Karnataka and CIPL Tamil Nadu in respect of the equipment. Hence, it cannot be said that there is a supply between CIPL Karnataka and CIPL Tamil Nadu in case of such movement.

– It must rather be noted that in such a case, CIPL Karnataka is supplying a sendee to the Applicant by facilitating the movement of equipment to CIPL Tamil Nadu.

Accordingly, such service of facilitating the movement of equipment would be taxable in the hands of CI PL Karnataka.

12. Submission with respect to non-admission of Question 3 and 5

12.1. In the impugned order, the Advance Ruling Authority has not admitted question 3 and 5 of the application on the ground that (he same is related to documentation which is outside the purview of Section 97 of CGST Act.

12.2. In this regard, it is humbly submitted that the documents required are intricately linked to the other questions on which ruling is sought by the Appellant. Further, the said questions were also answered by Advance Ruling Authority, Karnataka in the Appellant's own case (supra).

12.3. In the Appellant's view, since the underlying movement of goods under both the scenarios is for reasons other than supply of goods, a delivery challan shall be required to be issued in terms of Rule 55 of CGST Rules. No tax invoice shall be required for movement.

Accordingly, it is humbly prayed before your goodself to examine the said questions on merits and render a ruling thereof.

PERSONAL HEARING

13. The personal hearing in the matter was conducted on 21.03.2023 which was attended by Shri, (i) Shri. Sachin Agarwal, CA & Shri. Sarvesh Saraogi, CA on behalf of the Appellant. During the personal hearing the Appellant reiterated their earlier submissions made while filing the Appeal under consideration.

JURISDICTIONAL OFFICERS COMMENTS

14. The Jurisdictional Officer vide their email dated 09.02.2023 have submitted the following submissions against the questions asked from the appellate authority;

Question No. 2;

(i) The department submitted that CIPL, Maharashtra and any of the branches of CIPL located outside Maharashtra are having separate GST registrations and are two entities deemed to be distinct persons. Thus, the valuation in such case shall be governed as per sub-section (4) and (5) of section 25 of the CGST Act,2017 read with second proviso to Rule 28 of the CGST Rules and accordingly the invoice value shall be deemed to be open market value or the transaction value for levy of GST, where the recipient is entitled to full input tax credit. Since, the recipient branch of CIPL would avail input tax credit as per the lease value charged by the supplier branch of CIPL, if the recipient branch charges more value to the ultimate customer at the time of further supply of said equipment, they would pay more tax on said value addition after setting off the input tax credit availed by them at the time of receipt of such supply.

Question No. 3 & 5:

(ii) The department stated that the movement of goods in respect of any supply by CIPL, Maharashtra to

its branch has to be covered by an Invoice as envisaged under Section 31 of CGST Act. 2017 and e-way bill as per Rule 138 of CGST Rules, 2017. Since, CIPL, Maharashtra being supplier has to discharge tax liability on the said supply of services, it is essential for them to raise a tax invoice and unless the said transaction is reflected in GSTR-I filed by them and tax is paid, the recipient branch of CJPL may not be able or entitled to avail input tax credit in respect of said supply in view of Section 16 of CGST Act. 2017

Question No. 4

(iii) The department submitted that the applicant so far has contended that CIPL, Maharashtra will be the owner of the equipment and they will supply said equipment to their branches on lease and hence they are not considering the value of equipment for payment of tax and ultimately they will be paying tax on the amount of service charged for the said leasing. Once it is accepted that tax is payable on service portion for leasing of equipment by CI PL. Maharashtra to any "X" branch of CIPL located in another state, the same analogy applies when the said equipment moves from the said 'X' branch to 'Y' branch of CIPL located in third state as per the instructions of CIPL, Maharashtra. In such case, if the movement of said equipment is in pursuance of an agreement between CIPL. Maharashtra and said "Y" branch of CIPL, then the valuation and documentation as discussed in the above paras has to be followed by CIPL, Maharashtra. In this regard, the CIPL. Maharashtra will pay applicable tax and raise taxable invoice to 'Y' branch of CIPL whereas, the 'X' branch of CIPL where the equipment is lying merely facilitate movement of said equipment from the location of 'X' branch to the location of 'Y' branch under cover of delivery challan, as per Rule 55 of CGST Rules 2017.

DISCUSSIONS AND FINDINGS

15. We have carefully gone through the entire appeal memorandum containing the submissions made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR, wherein the MAAR has held that the transaction between state of Maharashtra and State of Karnataka would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST and MGST Act, 2017. Secondly, MAAR didn't answer question in respect of taxability of the aforesaid transaction since the business model is not operational. Thirdly, in question related to documentation for the movement of goods, the question has not been admitted. In answer to question no. 4 in relation to movement of goods by Maharashtra to Karnataka and in turn to Tamil Nadu will amount to supply, the same has not been answered. In relation to Question No. 5 for the documentation in relation to scenario of question no. 4, the same has not been admitted. The appellant is contending the ruling passed in respect to Question no. 2 and 4, as well as the no admission of the Question No. 3 and 5.

16. It is clear from the MAAR order that the transfer of such equipment on lease as per the agreement entered to between CIPL, Maharashtra and CIPL, Karnataka would amount to lease or renting of the goods for a consideration and hence would be a transaction of supply of services, as it is for a certain period of time and the same has not be challenged by the appellant also.

17. Since in the Appellant's own case, Karnataka Advance Ruling authority vide order dated 16.07.2021 passed the ruling in their favour, the same is being relied upon to analyse the case in the present scenario.

Question No. 2

18. In answer to question no. 2, MAAR held that the value of supply of leasing services by CI PL Maharashtra to other registration should be the value which is charged by the recipient branch to the ultimate customer in the other states. The relevant provisions in relation to the valuation is as under

18.1. Section 15(1) which is related to the transaction value being considered as the value of supply & reads as under:

"(1) The value of supply of goods or services or both shall be the 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 supply are not related and the price is the sole consideration for the supply. "

19. From the above, it can be noted that the transaction value which is the price actually paid cannot be treated as the value of supply as the supplies are between the related persons i.e the branches of the same company. Hence, we proceed to examine the following provisions of the Act.

"15(4) Where the value of supply of goods or services or both cannot be determined under subsection (1), the same shall be determined in such manner as may be prescribed. 15(5) Notwithstanding anything

contained in subsection (1) or subsection (4) the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

20. Hence, the rules in relation to valuation needs to be examined which are as under:

"Rule 28: Value of supply of goods or services or both between distinct persons as specified in subsection (4) and (5) of Section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall -

(a) be the open market value of such supply.

(b) if the open market value is not available be the value of supply of goods or services of like kind and quality

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

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

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

Thus from the above it is clear that the recipient CIPI Karnataka who is recipient of the leasing services is eligible for full input tax credit in the transaction between the applicant and the CIPI Karnataka and hence the value declared in the invoice would be the value of goods or services or both as per the second proviso to Rule 28 and hence would be treated at the value of such supply. The aforesaid observation has been affirmed by AAR Maharashtra in the case of M/s BG Shirke Construction Technology Pvt Ltd [2021 (9) TMI 949 - Authority for Advance Ruling Maharashtra] wherein it has been held that we agree with the contention of the applicant that they may resort to valuation under Rule 28 of the CGST Rule in respect of transaction with related distinct persons who are eligible for full input tax credit as per the second proviso to Rule 28 of the CGST Rules 2017. Further the applicant has relied upon the rulings of M/s Kansai Nerolac Paints Ltd. [2019 (6) TMI 1108 Authority for advance Ruling Maharashtra] and M/s Specs makers Opticians Private limited (2020 (1) TMI 63 - Appellate Authority For advance Ruling, Tamil Nadu). Wherein similar stand was taken by the ruling authority. Similar stand was taken up by the applicant's own case by advance ruling authority of Karnataka [2021 (7) TMI 973]. Thus, we concur with the views expressed in the aforesaid judgement accordingly hold that the valuation in the present case will be governed as per the Second proviso to Rule 28 of CGST Rules 2017 read with Section 15 of the CGST and MGST Act 2017.

Question 3 & 5

21 The third and fifth question is in relation to the Documents that should be accompanied for the transaction in question. The aforesaid question were not admitted by MAAR on the ground that the same is related to documentation which is outside the purview of Section 97 of CGST Act, 2017. The same has been reproduced as under:

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of-

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(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;

(f) whether applicant is required to be registered;

(g) 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.

The appellant contends that the documents required are intricately linked to the other questions on which ruling is sought by the Appellant and the said questions were answered by Advance Ruling Authority, Karnataka in the Appellant's own case. However, we find that the question raised by the applicant doesn't fall in any of the categories mentioned under the provisions of Section 97(2) of CGST Act, 2017. Also, the present application has been done under the provisions of Section 97(2)(c) and 97(2)(g) of CGST Act, 2017. The question sought by the applicant doesn't fall in either of the categories and hence cannot be answered. Further, it is on record that no supply of goods or services in the scenario explained by the appellant has been undertaken.

Question No. 4

22. The fourth question is "Whether movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra can be said to be mere movement of goods not amounting to supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?" Thus, the same is related to movement of goods from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra.

23. We notice that though the CIPL, Karnataka is in the possession of the goods, it is CIPL, Maharashtra who is the owner of the goods, The CIPL, Karnataka is a lessee of the goods and they have to give the goods back on the termination of the Contract of lease between CIPL, Karnataka and CIPL, Maharashtra.

24. In case CIPL, Maharashtra instructs CIPL, Karnataka, on termination of contract between them, to transfer the goods to CIPL, Tamil Nadu. CIPL, Karnataka in such a situation, under the instruction of CIPL, Maharashtra arranges or facilitates to transport the goods to CIPL, Tamil Nadu, and thus the CIPL Karnataka acts as an agent of CIPL, Maharashtra in the said facilitation and not in independent capacity. Once, the CIPL Maharashtra issued instructions to CIPL, Karnataka, the contract of lease entered between them in respect of the said goods ends and the goods now held by CIPL, Karnataka as the bailee of CIPL, Maharashtra. Hence, CIPL, Karnataka would be acting in two capacities, first as an independent entity under the CGST Act for the leased goods while the lease contract of the specific goods is in force and next as a bailee of CIPL, Maharashtra. Once the lease contract is over, the CIPL, Maharashtra should enter into lease transaction with the CIPL, Tamil Nadu for the specific goods which are given on lease or rent and in effect it would amount to CIPL, Maharashtra picking the goods and sending to CIPL, Tamil Nadu.

25. In such a case, the goods in movement is a consequence of the lease contract between the CIPL, Maharashtra and CIPL, Tamil Nadu which is a supply by CIPL, Maharashtra. The transaction is nothing but the combination of the transactions of returning back the goods on lease by CIPL, Karnataka to CIPL, Maharashtra and again sending the same goods on a new lease contract by CIPL, Maharashtra to CIPL, Tamil Nadu. Thus, it cannot be said that the goods are moving not as a result of supply under Section 7 of the CGST Act, 2017. It cannot be termed as a mere movement without any involvement of supply and the said transaction of supply of goods on rental or lease basis by CIPL, Maharashtra to CIPL, Tamil Nadu is liable to tax in the hands of CIPL, Maharashtra as the transaction is between CIPL, Maharashtra and CIPL, Tamil Nadu. Further, the services provided by CIPL, Karnataka to CIPL, Maharashtra in facilitating the transportation of goods to CIPL, Tamil Nadu are exigible to GST.

26. As regards question no. 3 and 5 regarding the documents required to be carried with the goods under movement, we concur with the observations expressed by MAAR wherein it was stated that the said questions are not covered under the ambit of the Advance Ruling in terms of section 97 of the CGST Act, 2017.

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

Order

28. We, hereby, modify the advance ruling pronounced by the MAAR, and hold as under in respect of the question no. (2). (3). (4) and (5):

Question 2 - If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

Answer: The value declared in the invoice issued by the appellant would be the value on which GST has to be charged in terms of Section 15 of the CGST Act, 2017 read with second proviso to Rule 28 of the CGST Rules, 2017.

Question 3 - What are the documents that should accompany the movement of the goods from CIPL Maharashtra to CIPL Karnataka?

Answer: The aforesaid question cannot be answered as the same is not covered within the ambit of advance ruling in terms of section 97 of the CGST Act, 2017.

Question 4 - Whether movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act. and thereby not liable to GST?

Answer: Movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra cannot be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act, 2017 as the said transaction would fall under the ambit of supply of services in terms of section 7 of the CGST Act, 2017. The said supply of services involved in the transaction under question is being provided by CIPL Karnataka to CLPL Maharashtra in the capacity of bailee of CIPL Maharashtra for which CIPL Karnataka is charging facilitation fee along with applicable GST from the Appellant, i.e., CIPL Maharashtra as per the Inter-unit Memorandum of Understanding entered between the Appellant and other state units. It is further clarified here that the said movement of goods from CIPL Karnataka to CIPL Tamil Nadu as per the instruction received from CIPL Maharashtra, the owner of goods, will again be treated as supply of lease rental services by CIPL Maharashtra to CIPL Tamil Nadu as ruled by the MAAR.

Question 5 - With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL Karnataka to CI PL Tamil Nadu?

Answer: The aforesaid question cannot be answered as the same is not covered within the ambit of advance ruling in terms of Section 97 of the CGST Act 2017.

(Rajeev Kumar Mital)

MEMBER

(Dr. D. K. SRINIVAS)

MEMBER