GST ADVANCE RULING

CA. C. B. Thakar, CA. Jinal Maru

Case: M/s TATA MOTORS LTD[2021-TIOL-197] (GUJARAT AAR)

Facts of the Case:

1. The applicant are maintaining canteen facility to its employees at its factory premises to comply with the mandatory requirement of maintaining the canteen as per the Factories Act, 1948

2. The Applicant is recovering nominal amount on monthly basis to ensure use of canteen facility only by authorized persons/employees and expenditure incurred towards canteen facility borne by Applicant is part and parcel of cost to company

Questions before AAR:

1. Whether input tax credit (ITC) available to Applicant on GST charged by service provider on canteen facility provided to employees working in factory?

2. Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of canteen facility?

3. If ITC is available as per question no. (1) above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?

Arguments by Applicant:

1. The applicant submits that as per the proviso to Section 17(5) (b) of Central Goods & Service Tax Act, 2017 , ITC of GST paid on goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

2. In press release dated 10.07.2017 also, it was clarified that, supply by employer to employee in terms of contractual agreement of employment (part of salary/CTC) is not subject to GST. Once employee ceases to be in employment with Applicant, he/she is not authorized to use the canteen facility. In other words, employer-employee relationship is must to avail this facility

3. That it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. This activity carried out by applicant is without consideration.

4. They are not in the business of providing canteen service and hence recovery of nominal amount will not fall in definition of supply at all. Similar view is also upheld by Maharashtra AAR in the case of Jotun India (P) Ltd- 2019-TIOL-312-AAR-GST.

5. They deducted nominal amount from employee's salary for availing canteen facility. In other words, difference between amount paid to service provider and amount recovered from employees is cost to company as salary cost.

Decision of AAR

1. That sub clause of Section 17(5)(b)(i) ends with colon : and is followed by a proviso and this proviso ends with a semicolon. Colons and semicolons are two types of punctuation. Colons are used in sentences to show that something is following, like a quotation, example, or list. Semicolons are used to join two independent clauses/ subclauses, or two complete thoughts that could stand alone

as complete sentences. That means they're to be used when you're dealing with two complete thoughts that could stand alone as a sentence.

2. Section 17(5)(b) of CGST Act, 2017 reads as follows:-

Section 17(5)(b) "(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

3. We find that semicolon creates a wall for conveying mutual exclusivity between the sub-clauses, in present matter. It is obvious that the legislature intended the said sub-clauses to be distinct and separate alternatives, with distinctively different qualifying factors and conditionality's.

4. Thus, Section 17(5)(b)(i) sub-clause ending with a colon and followed by a proviso which ends with a semi colon is to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of sub clause iii]. Thereby, the proviso to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it.

5. We notice that case law: CCE, Nagpur vs Ultratech Cements Ltd as reported in 2010-TIOL-745-HC-MUM-ST was cited by applicant wherein credit was held not admissible to manufacturer on part of cost borne by worker. The case law pertains to Service Tax era. We now are dealing with GST matter and are to pronounce Ruling within the confines of CGST Act. The cited case law therefore does not apply to the present matter. Also, the ITC on GST paid on canteen facility itself being inadmissible, said case law, therefore does not cover the matter at hand.

6. Thus,

(1) ITC on GST paid on canteen facility is blocked credit under Section 17 (5)(b)(i) of CGST Act and inadmissible to applicant.

(2) GST is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider

Case: M/s YASHASWI ACADEMY FOR SKILLS [2021-TIOL-213-AAR] (MAHARSHTRA AAR)

Facts of the Case:

1. The applicant is registered as a 'not for Profit Company' under sec. 25 of the Companies Act 1956. Applicant 's activities are Charitable and they hold registration under Sec I 2AA of Income Tax Act 1961

2. They are also registered as Third Party aggregator under the Apprentice Act 1961. Applicant provides support for mobilizing the trainees under National Apprenticeship promotion Scheme for providing them on-the-job practical training in industries. For that purpose Applicant enters into agreements with various companies/organizations (called as industry partner) who impart actual practical training to the students. As per Apprentice Rules 1992, Industry establishments are required to engage apprentices at certain percentage of total employees. During the duration of the training, the apprentices are paid monthly stipend. They are not treated as employees of the company.

3. The applicant is assigned the following functions: A) Preparation of monthly attendance record of the apprentices and getting it certified from the Company B) Processing Stipend of the apprentices C) Payment of stipend to the apprentices in their individual bank accounts D) Providing uniform and safety shoes (as per requirement of industry partner) to the trainees E) Take Insurance policies towards Employee Compensation and Personal Accident Policy for trainees.

4. For carrying out the above mentioned functions, YAS gets fixed professional service charges fees per candidate, per month from the Industry partner. YAS issues invoices specifying separately the professional service charges and amount for reimbursement of Actual expenses incurred on behalf of industry partner towards stipend, cost of uniform and safety shoes, insurance premiums.

Questions before AAR:

1. Whether the reimbursement by Industry Partner to M/s Yashaswi Academy for Skills of the stipend paid to students, insurance premium, cost of uniform & safety shoes attracts GST?

Arguments by Appellant:

1. Apprentice students are paid remuneration in the form of stipend for their work as Apprentice. Thus industry is recipient of supply of service. Hence the expenditure on behalf of industry will qualify as agent. The applicant does not procure goods and services for his own interest. Shoes, uniform and insurance premium are not for use of applicant. They get reimbursement of actual amount incurred for procurement of goods and/or services on behalf of principal (industry Partner).

2. They get separate charges for providing the services of selecting Apprentices, preparing stipend statement and disbursing stipend, taking out insurance policies, procuring uniform and safety shoes.

3. The Authority for Advance Ruling - Karnataka under GST Act in similar case of CADMAXX SOLUTION EDUCATION TRUST has held that reimbursements for stipend and insurance premium are not taxable under GST

4. The Apprentice Act 1961 is a Central legislation to regulate and control training of apprentices and matters connected thereto. The qualification as trainees and criteria as employer and the duties and obligations of trainees and employer are provided in the Act. The trainees and industries are spread all over India. To bring them together the government approves organizations having expertise in this field. Such organization is required to get itself empaneled. The Ministry of

Skill Development and Entrepreneurship has selected the Applicant to do this job and has registered and empaneled the applicant as “Third Party aggregator”. In proof of registration a letter from Ministry of Skill Development and Entrepreneurship is attached.

5. Agent’s job is to select trainees and also suitable industrial establishments for imparting practical training and to coordinate between them for the proper implementation of scheme of training. As per the terms of employment, applicant is required to prepare and submit report of stipend and claim reimbursement of it every month. Applicant is not entitled to charge any amount to apprentices but can charge administration fees to the establishment who actually run the apprenticeship programme.

6. The applicant, in pursuance of it’s registration as “third party aggregator” enters into agreement with industrial establishments for imparting actual training to the trainees. The agreements are required to be in conformity with the scheme and regulation under Apprentice Act. Therefore, all agreements, in sum and substance, are identical.

7. The Applicant therefore contents that he acts as pure agent for transfer of funds from industrial establishment to the trainees, by way of reimbursement. In these transactions the Applicant does not get any consideration from the trainees, and hence the amount received as reimbursement of stipend is not taxable under CGST/SGST Act

Decision of AAR

1. The applicant withdrew Question nos. 2 and 3 during their oral submissions made on 27.07.201 and have further confirmed the same vide their correspondence dated 28.07.2021. Hence our discussions will only be in respect of Question No. 1 namely; “Whether the reimbursement by Industry Partner to the applicant, of the stipend paid to students attracts GST”.

2. We find that, the applicant, is empanelled with the Ministry of Skill Development and Entrepreneurship, as a “Third Party aggregator” for mobilizing the trainees under National Apprenticeship Promotion Scheme (NAPS) for providing them on-the-job practical training in various industries, for which they enter into agreements with various companies/ organizations (called as industry partner) who impart actual practical training to the students. The applicant, in lieu of agreements with the industry partners, is engaged in preparing monthly attendance record of the apprentices, getting it certified from the Company ; processing stipends of the apprentices ; making payment of stipend to the apprentices ; providing uniform and safety shoes to the trainees ; taking Insurance policies for trainees towards Employee Compensation and Personal Accident Policy. For all such services rendered the applicant is paid service charge per month per trainee on which GST is being discharged

3. The industry partner that provides training to the trainees is required to pay stipend to the trainees. This stipend is not directly paid to the trainees by the companies, rather the same are routed through the applicant.

4. The applicant is only a conduit for the payment of stipend and the actual service is supplied by the trainees to the trainer companies (industry partners) against which stipend is payable. Hence the amount of stipend received by the applicant from the industry partners and paid in full to the trainees is not taxable at the hands of the applicant. Hence, in view of the submissions made by the applicant and also in agreement with the observations made by the jurisdictional officer, it is held that the reimbursement by Industry Partner to the applicant of the stipend paid to students does not attract GST.

Case: M/s POOJA VASHINAVI SCHOOL BUS SERVICES [2021-TIOL-214] (MAHARASHTRA AAR)

Facts of the Case:

1. The applicant are providing transportation of passengers excluding tourism, conducted tour, charter or hire of NON Air Conditioned Buses under a contract carriage with our customer.

2. They have entered in contract with M/s Ratan India Power Limited for supply of NON AC Buses for transportation of their staff under contract carriage.

Questions before AAR:

1. Whether GST is applicable for the same contract and applicability of "SI No. 15 Heading 9964 of exemption Notification No. 12/2017- CTR dated: 28/06/2017

Arguments by Applicant:

1. S.No. 15 (b) of the above-mentioned notification exempts transport of passengers if following conditions satisfies: - It must be Contract Carriage, The contract carriage shall be non-air conditioned, It must not be Radio Taxi, It must be for transportation of passengers, It excludes Tourism Tour, Charter & Hire

2. Contract Carriage as defined u/s 2(7) of The Motor Vehicles Act, 1988

(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance,' or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes

(i) a maxicab; and

(ii) a motorcab notwithstanding the separate fares are charged for its passengers;

3. Hire must not be understood in normal meaning. In fact it has to be understood under the provisions of the Motor Vehicle Act. In exercise of the powers conferred in 75(1) of the Motor Vehicle Act, 1988, the central government makes Rent-a-Cab Scheme 1981 to regulate the business of renting of motor cabs for their own use. 2.5.4 Section 10 of the Scheme prescribes duties and responsibilities of hirer of motor cab. The same is reproduced as under: -

10. Duties and responsibilities of hirers of motor cabs.-

(1) It shall be the duty of every hirer, to keep the holder of the license, informed of his movements from time to time.

(2) If an individual or company has hired the vehicles as a leader of the tourist party, it shall be the duty of such leader of the party to keep the holder of the license informed of the movement of each vehicle, from time to time.

(3) If a hirer so desires, he may engage a person possessing a valid driving license to drive the vehicle so hired during the period of the hire agreement.

4. A license holder may hire his vehicle for any person for his own use and the same will be regulated as per The Rent A Cab Scheme, 1989. The scheme gives the sense of hiring of a motor cab to a person for own use. Hire can be explained in the terms of the scheme that hiring of a motor cab by a license holder to any person for own use. It is a right to use over the motor cab with effective control. Such hiring was neither taxable as services under the Finance Act, 1994 nor it is taxable as service under the CGST Act. In fact it was taxable as goods under the state VAT and similarly, it is taxable in the same category of the goods under GST. Means such hiring will be taxable with the GST rates of the motor under the GST Act.

Arguments by Revenue:

1. As per copy of Service Order dated 01.07.2019, the said contract has a subject heading "Deployment of Staff buses for transport of staff under contract carriage at 5x270 MW TPP Nandgaon Peth, Amravati." it is crystal clear that said contract carriage is hire contract for staff. Also supplier has raised Tax invoice with description of service as "HIRING OF VEHICLE"

2. The Rajasthan Authority for Advance Ruling in case of Pawanputra Travels (GST AAR Rajasthan) vide Advance rulings No. RAJ/AAR/2018-19/24 dated 02/11/2018 (2018-TIOL-317-AAR-GST) where advance ruling was sought on "the applicability of GST rate on supply of non-air conditioned vehicles on hire to Indian Army" and in that case 'contract carriage is discussed in detail and concluded with the essential indgredient of a contract carriage is that it plies under a contract for a fixed set of passengers, and does not allow any other passenger to board or alight from the carriage at will. A contract carriage carries passengers as a group and cannot pick up passengers enroute.

3. It is hence concluded that the service provided by the applicant falls under "rent a cab' service which attracts: IGST -) 5% or (CGST - 2.5% and SGST - 2.5%) provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken, Or IGST @ 12% (SGST @ 6% and SGST @ 6%) if input tax credit is to be availed.

4. The point which merits examination here is that whether the impugned services are covered by the definition of "rent-a-cab". In this regard, it is observed that the phrase "rent a-cab has not been defined in the CGST/SGST Act, 2017. In situations where statutory meaning of any term/phrase has not been provided words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances.

5. As per information available on website https://en.wikipedia.org/wiki/Cab,

Cab means Cab or CAB may refer to: - Transport

- Cab (locomotive), the driving compartment of a locomotive Cab car
- Cabin (truck), an enclosed space in a truck where the driver is seated
- Cabriolet (carriage) (obsolete), a type of horse-drawn carriage
- Causeway Bay Station, Hong Kong; MTR station code CAB Civil Aeronautics Board

- Constructions Aeronautiques du Bearn, former French aircraft manufacturer
- Controller anti-lock brake, see Anti-lock braking system
- NATO reporting name for the Lisunov Li-2 aircraft
- Taxicab, a type of vehicle for hire with a driver
- Tractor unit of an articulated lorry, known in Britain as an artic cab

6. It emerges that in common parlance, cab refers to a vehicle which has been taken on hire/rent, along with driver, for going from one place to another.

7. When it comes to GST, tax on services finds its genesis from Chapter V of the Finance Act, 1994, i.e., the Service Tax statute. Therefore, the definitions relating to "rent-a-cab" as occurring in the Finance Act, 1994, shall also have bearing on what is meant by "rent-a-cab" in common commercial parlance when it comes to understanding the same for the purpose of taxing statutes. - As per Section 65(105) (O) - 'taxable service means any service provided or to be provided to any person, by a 'rent-a-cab scheme operator' in relation to the renting Of a cab."

8. From the above, it emerges that where any commercial vehicle is hired for transportation of passengers, it would be squarely covered by the phrase "rent-a-cab". In other words, any person who provides motor vehicle designed to carry 'passengers', on rent, would be included. This also implies that it includes renting of motor cars, motor cabs, maxi cabs, mini buses, buses and all other motor vehicles which are designed to carry passengers, irrespective of their capacity to carry passengers.

9. The activity of the contractor in the instant case, providing buses on hire to the M/s. Ratan India Power Ltd, is specifically covered under the meaning of "rent-a-cab".

10. In view of above, it clearly stands established that the services of the applicant for hiring of buses for transportation of employees qualify as "rent-a-cab" services. Therefore in view of above rulings and facts the Service provided by the applicant is not exempted under Notification No. 12/2017 dated 28.06.2017 as this Service does not fall under 'non-air-conditioned contract carriage category. The service provided is hire service or rent a cab' Service.

Decision of AAR

1. As per 'Service Order' No, 3382017288 dated 01.07.2019, entered into with M/S Rattan India Power Limited (RIPL) certain details of which are as under.

(1) From a reading of page 1/8 of the said Service Order, it is seen that the said order is for hire of 27 seater and 32 seater Bus (Non-AC) for transportation of staff.

(2) Clause 2 of the said Order deals with the Contract Price which as per clauses 2.1 to 2.4 shows that the payment will be made per Bus.

(3) Clause 4.1 of the said Order states that the Scope of work includes deployment of staff buses (total 4 nos buses) to transport staff under contract carriage on monthly hire basis.

(4) The buses shall operate strictly as per instructions of RIPL's Admin-in-Charge.

(5) As per clause 5.2, the contract period shall be 10 months and as per clause 5.3, the contract may be extended subject to performance of the contractor i.e. the applicant under mutual consent of both the parties.

(6) The supplier, i.e. the applicant shall ensure all the compliance related to GST for the supplies or services rendered including Tax Amount.

2. The applicant has an agreement with RIPL for supplying Non-AC buses to transport staff of RIPL and the buses are owned by the applicant. Further, the applicant also incurs expenses on fuel and maintenance of the buses and for all these services provided by the applicant, they are paid fixed hire cost plus fixed fuel cost at predetermined rates of fuel plus mileage.

3. It is RIPL which controls the deployment of the buses. A perusal of the agreement reveals that the applicant shall deploy the buses (already inspected by RIPL) or as per instructions of the Admn. Dept. of RIPL. Thus the applicant cannot run the buses on their own because the overall control of the buses is with RIPL. Further, as per the agreement, Insurance Charges, etc., will be paid by the applicant whereas toll tax, etc will be paid by RIPL. Thus while the ownership of the buses lies with the applicant, the buses shall be operated strictly as per the instructions of RIPL. Therefore in the subject case, there is a clear transfer of right to use the buses by way of effective control as is seen from the fact that the buses are plying strictly as per RIPL's instructions.

4. From the submissions made by the applicant it is clear that they are considering their service as transportation of passengers. We may mention here that, 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, like buses in the subject case, the recipient would not be the passenger. In the subject case, the consideration for supply of service is charged from RIPL and not the passenger. Therefore in the subject case it is clear that the recipient is RIPL. 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 not 'transportation of passengers' as discussed, the provisions of Notification No. 12/2017-CT (R) dated 28.06.2017 are not applicable in the subject case.

5. Further, as per section 2(7) of Motors Vehicles Act, the essential ingredient of a contract carriage is that it plies under a contract for a fixed set of passengers, and does not allow any other passenger to board or alight from the carriage at will. A 'contract carriage' canies passengers as a group and cannot pick up passengers en-route. 4 The applicant does not satisfy the condition prescribed in clause (a) nor specified in clause (b) of clause (7) of section 2 of the Motor Vehicles Act, 1988 and accordingly, they cannot be considered as 'non air-conditioned contract carriage' and are hence not eligible for exemption under the serial no. 15 of the exemption notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

6. Even if the contract is assumed as 'non-airconditioned contract carriage', Serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 does not exempt it from GST, as the "hired" non-airconditioned contract carriage are 'excluded' from exemption as specifically mentioned in the said notification. Hence the service provided by the applicant falls under 'rent a cab' service.

7. The subject case is clearly covered by Entry Sr. No. 10 of Notification No. 11/2017-CT (Rate) dated 28.06.2017 in as much as there is a Rental services of transport vehicles with or without operators. All 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 Cenvat Credit.