

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

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

**BEFORE THE BENCH OF**

- (1) **Shri B. V. Borhade, Joint Commissioner of State Tax**  
(2) **Shri Pankaj Kumar, Joint Commissioner of Central Tax**

GSTIN Number, if any/ User-id	27AAYXS0935M1ZJ
Legal Name of Applicant	SST SUSTAINABLE TRANSPORT SOLUTIONS INDIA PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	PLOT NO. C-49, MIDC ROAD, HINGNA, NAGPUR - 440028
Details of application	GST-ARA, Application No. 68 Dated 20.08.2018
Concerned officer	Principal Commissioner GST, GST Bhavan, P.O. Box Ni. 81, Telangkhedi Road, Civil Lines, Nagpur - 40001.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Providing services to Nagpur Municipal Corporation of operation and maintenance of AC Green bus runs on Ethanol Fuel.
Issue/s on which advance ruling required	(i) Classification of goods and /or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

**PROCEEDINGS**

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

The present application has been 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"] by SST SUSTAINABLE TRANSPORT SOLUTIONS INDIA PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following ISSUE. .

*Under which Chapter Heading / Service Code our activity will classify ?*

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 specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

**02. FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

We, M/s. SST SUSTAINABLE TRANSPORT SOLUTIONS INDIA PRIVATE LIMITED, a private limited company having its Registered office at Plot No. C-49, Hingna Road, MIDC, Nagpur-440028 had entered into an agreement i.e. Service Provider Agreement dated 18/08/2017 with Nagpur Municipal Corporation (NMC) for "Operation and maintenance of AC Green Buses Running on Bio Ethanol Fuel for Nagpur Urban Region".

As per the agreement we are providing the Services of Running AC Green City Buses for Transport of General Public and for the same NMC is paying us the Service Charges calculated as per agreement on the Total Run effective kilometers and NMC collects the fare from the passengers.

We are providing following services relating to the transportation of passengers

1. Providing Bus with Driver.
2. Providing Fuel for the Buses
3. Repair & maintenance of the buses,
4. We have established own workshop and service station for maintenance of the buses
5. The NMC is paying us the Service Charges on the basis of per Effective Run kilometres.
6. The rout of the Buses & the applicable fare is decided and collected by the NMC.



As per the above it is clear that we are providing Services to NMC by providing the Busses along with Driver, Fuel & Maintenance for use of General Public at Large.

We have to start billing for the services and as per the discussions with the Accounts Officer of NMC, the GST applicable for the Green Bus Operations is Nil.

**We want to confirm from your office that under which Chapter Heading / Service Code our above activity will classify.**

As per our interpretation and looking to the services provided by us to the General Public at Large, the same should classify under chapter heading 9966 i.e. Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve Passengers; or (b) to a goods transport agency, a means of transportation of goods. (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

Kindly give your confirmation about the classification of our activity on the basis of the above and as per our Agreement with NMC, Copy of which is enclosed herewith for your perusal.

**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).**

#### **BRIEF HISTORY OF THE CASE**

M/s SST Sustainable Transport Solutions India Private Limited (service provider) is a private Limited Company having registered place of business at plot no. C-49, Hingna Road, MIDC, Nagpur- 440028.

The Nagpur Municipal Corporation has been entrusted the task of implementing the AC Green Buses and for this purpose it sought service provider for Purchase, Supply, Operation, Maintenance etc of AC Green Buses. The company had entered into an Agreement with Nagpur Municipal Corporation (NMC) for Operation and maintenance of AC Green Buses Run on Bio Ethanol Fuel for Nagpur Urban Region. The agreement was executed on 18th Aug. 2017.

#### **(A) Relevant clauses of the Agreement:**

(a) Relevant obligations of service provider:

1. Providing Bus with Driver, (clause 2.5.2 a & clause 4.1.w)
- Providing Fuel for Buses, (clause 4.1 c)
- Repair & maintenance of the Buses,

The service provider shall operate and maintain the Bus provided for AC Green Buses Service in accordance with the basic requirements of the Scope of work, and requirements for operation schedules on trips/routes in area as prescribed/ directed by NMC (clause 4.8 a)

Service provider has right to receive payment of hiring charges from NMC ( clause 5.1.a)

(b) The main obligations of the NMC are

1. The NMC is required to pay Service Charges on the basis of per Effective Run Kilometers. As per clause 3.1, 3.2, 3.3 of the agreement,
2. NMC would provide certain premises for set up the parking yard and facilities to operate and maintenance of buses as per clause 4.2 of the agreement.
3. NMC would provide the space for fuel filling stations,
4. NMC shall have complete and full right for collection of fare for the Bus Service and to determine and implement methodology for the same. ( clause 7.1 h)

(c) Joint responsibilities:

Clause 3.3.1 provides for joint responsibility to pay taxes and statutory charges related to Bus Services would be divided between the NMC and the service provider however the clause is silent about payment of SGST-CGST/IGST. Thus as per the provisions of Goods and Services Tax statute the legitimate taxes would be collected by the service provider from NMC and will pay the same.

#### **(B) NATURE OF TRANSACTION:**

##### **1. Whether transfer of right to use any goods for any purpose**

Your applicant is engaged in supplying 'AC Green Buses' to Nagpur Municipal Corporation, on the basis of operation, repairs & maintenance, providing drivers, etc in accordance with the basic requirements of the Scope of work, and requirements for operation schedules on trips/routes in area as prescribed/ directed by NMC. Prima-facie it seems that the transaction would be of the nature of transfer of right to use any goods for any purpose.

Such interpretation could be derived on the lines of judgment in case of Tripura Bus Syndicate 122 STC 175, and in the case of Godavari Finance Co (2008) SCC 0107 S.C. it is observed that though the drivers were the employee of the owner of the vehicle they have to follow the directions and instructions of the transferee and thus the vehicles under the effective control of the hirer. In the case of Rajasthan State Road Transport Corporation, 1997 (007) SCC 481, while deciding the case of compensation, Supreme Court has observed that notwithstanding the fact that the driver would continue to be on the pay roll of the owner, he has to act under the instructions, control and command of the conductor and other officers and the effective control is transferred to hirer. Reference can also be made to the case of G.S. Lamba and Sons (43 VST 323) where in Hon'ble Andhra Pradesh High court has discussed catena of decisions to elaborate the deemed sale transfer of right to use goods, one of the case cited by the court is of K.C. Behera v State of Orissa (83 STC 325) where the court has observed "Buses- bus hired out to State Transport Corporation the contract disentitled from using the vehicle covered by the agreement in any route. The Bus was to be run for Corporation as per the agreement and directions of an officer. The transaction is a "sale" within the extended meaning of the word. Providing of driver





by the owner notwithstanding there was a transfer of the right to use bus for consideration, and effective control and possession of the bus vested in the Corporation." The case is identical to the facts of the present issue. The High Court in the case of G.S. Lamba, supra, has lead down the parameters of transactions for transfer of right to use goods, the relevant essential requirements are reproduced here "(iv) the effective or general control does not mean always physical control and even if the manner, method, modification modalities and time of use of goods; and(v) the approvals, concessions, licences or permit in relation to goods would also available to the user of the goods even if such licences or permits are in the name of the owner(transferor) of the goods, and (vi) during the period of contract exclusive right to use goods along with permits, licences, etc vests in the lessee." It is also pertinent to mentioned here that logo of NMC is pasted on the vehicle provided to NMC thus the ratio decidende of G.S. Lambas' case is squarely applicable to the present issue.

In light of the position of law there is a possibility that the transaction is of the nature of transfer of right to use any goods for any purpose cannot be denied.

## 2. Whether Hiring charges:

The applicant is engaged in the business to undertake and carry on the activity of providing all kind of services in the nature of plying, hiring, operation and comprehensive maintenance of buses. To operate and maintain buses supplied as per the route plan and schedule of trips as per the directions of the Corporation. Make arrangements for fuel, drivers and skilled staff for operation and maintenance etc. Claim hiring charges from NMC. Thus the charges for the operation as a whole would be 'Hiring charges' claim on kilometer basis.

### (C) Cause of Advance ruling:

Nagpur Municipal Corporation through its communication letter no. Transport/885/2017 dated 30/12/2017 [copy of the letter is annexed hereto and marked as **Exhibit -I**] had informed the service provider that the corporation had obtained clarification from the Joint Commissioner of Central Excise, Customs and Service Tax, Nagpur bearing No. IV/ (16)30-6/GST/2017 dated 23/08/2017 [copy of the letter is annexed hereto and marked as **Exhibit -II**]. The relevant part of the communication made by the Joint Commissioner of Central Excise, Customs and Service Tax, Nagpur dated 23/08/2017 is reproduced verbatim hereunder-

"This is to confirm that as per Sl. No.15 of the Notification No.12 of 2017- Central Tax (Rate), dated 28.06.2017, stage carriage other than air- conditioned stage carriage attracts "NIL" rate of GST." In response to the communication of SMC dated 30/12/2017 the company had filed return reply through letter dated 12 Feb.2018 [the copy of the letter is annexed hereto and marked as **Exhibit -III**] which states that the clarification issued by the Joint Commissioner is in respect of the transaction of supply between the Corporation and the passengers-traveler to whom the Corporation would charge fare charges.

Sr. No. 15 (c) of the Notification No 12/2017- State Tax (Rate) dated 29<sup>th</sup> June, 2017 read thus "stage carriage other than air- conditioned stage carriage -rate of tax Nil" [the copy of Notification is annexed hereto and marked as **exhibit -IV**]

It is pertinent to mention here that the 'Green Bus' provided to the Corporation is Air Conditioned Bus and the entry for tax rate is specifically for 'other than air conditioned stage carriage'. Secondly the entry is for supply transaction for 'Transport of passengers' not for leasing or hiring transaction. The nature of transaction between the service provider and the Corporation is of the nature of leasing/renting supply and not of charging fair to the passengers. The "Green Bus Contract Agreement" dated 18<sup>th</sup> August 2017 (hereinafter called as 'the Agreement') [the copy of the Agreement is annexed hereto and marked as **Exhibit -V**] provides NMC to collect fare from the commuters as per clause 7.1.h. Thus the entry referred by the Corporation does not cover the transaction between the service provider and the corporation.

It was informed to the Corporation that the transaction would cover under sr. No 8 (vii) of the Notification No.11/2017-State Tax (Rate) dated 29<sup>th</sup> June, 2017 [the copy of Notification is annexed hereto and marked as **Exhibit -VI**] which read as "Passenger transport service other than (i), (ii), (iii), (iv),(v) and (vi) above - rate of CGST -9%" The Corporation did not agree with the said rate and stickup to its earlier stand, this has been communicated by the Corporation through its letter dated 21/06/2018 [the copy of the letter is annexed hereto and marked as **exhibit -VII**]

### (D) SUBMISSION:

Your applicant, to know the correct rate of tax on the transaction of supply between the service provider and NMC and desires advance ruling under sub-section (1) of section 97 of the Maharashtra Goods and Service Tax Act, 2017. Accordingly, has filed an application in form GST ARA-01 on 03/07/2018 under Application Reference No. AD270718000170G. Your applicant had made required payment under Payment Reference Number- IP270718000010. And sought advance ruling under clause (a) of sub-section (2) of section 97 of the MGST Act, 2017.

In this connection your applicant submits that-

(1) The communication from the Joint Commissioner of Central Excise, Customs and Service Tax, Nagpur through letter no. IV/(16)30-6/GST/2017 dated 23/08/2017 stating that the transaction would attract 'Nil' GST as per Sr. No.15 of the Notification No.12 of 2017- Central Tax (Rate), dated 28.06.2017, stage carriage other than air-conditioned stage carriage is not applicable to the transaction between the applicant and the NMC. NMC cannot give reference of the communication of the Joint Commissioner as it is not relevant in the present issue.

The reliance on the communication of the Joint Commissioner is unwarranted and misleading. For the reasons that, the 'Green Bus' provided to the Corporation is Air Conditioned Bus and the entry 15 of the notification for tax rate is specifically for 'other than air conditioned stage carriage'. Secondly the entry is for supply transaction where 'Transport of passengers' is the recipient of services and not for leasing or hiring transaction. The nature of



transaction between the service provider and the Corporation is of the nature of leasing/renting supply and not of charging fare to the passengers.

(2) Your applicant desires advance ruling whether the transaction would be classifiable under Sl No 10(ii) of the notification No. 11/2017- State Tax (Rate) dated 29<sup>th</sup> June, 2017 liable to tax @ 9%. Which reads as "rental service of transport vehicles with or without operators, other than (i) above liable to tax @ 9% SGST.

(3) Your applicant desires advance ruling whether the transaction would be classifiable under Sl No 8(vii) of the notification No. 11/2017- State Tax (Rate) dated 29<sup>th</sup> June, 2017 liable to tax @ 9%. Which reads as " Passenger transport service other than (i), (ii), (iii), (iv), (v) and (vi) liable to tax @ 9% SGST.

(4) Your applicant desires to know whether the transaction would be classifiable under sub-clause (f) of clause 5 of Schedule II appended to the MSGST Act, 2017 [copy of schedule II is annexed hereto and mark as **exhibit-VIII**] which reads as "(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration." If the transaction is of the nature of transfer of the right to use any goods for any purpose, your applicant desires advance ruling whether it is classifiable under Sl. No 15(ii) of the Notification No 11/2017-State Tax (Rate) dated 29<sup>th</sup> June 2017.

(5) Your applicant desires advance ruling whether the transaction would be classifiable under Sl No 22 (a) of the notification No. 12/2017- State Tax (Rate) dated 29<sup>th</sup> June, 2017. Which reads as " Service by way of giving on hire- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or" liable to tax at Nil rate.

(6)

**NOTE ON INTERPRETATION ON NOTIFICATION ENTRIES FOR RATE OF TAX in respect of the contract between SST Sustainable Transport Solutions and NMC  
NOTIFICATION NO 11/2017 DATED 29/06/2017**

No 8 (ii) "transport of passengers with or without accompanied belongings by-2.5% SGST

(a) Air conditioned contract carriage other than motor cab

(b) Air conditioned stage carriage

(c) Radio taxi

Expln- (a) 'contract carriage' has the meaning assigned to it in clause (7) of section 2 of the MVA 1988 (59 of 1988),

(b) 'stage carriage' has the meaning assigned to it in clause (40) of section 2 of the MVA 1988 (59 of 1988),

This entry is in respect of transport of passengers, SST is not entered in to the contract to transport the passengers but to providing vehicles and related services to NMC, the entry is therefore not applicable to the transactions between SST and NMC.

No.8(vii) "Passenger transport service other than (i), (ii), (iii), (iv),(v) and (vi) above-rate of SGST-9%

This entry is in respect of transport of passengers, SST is not entered in to the contract to transport the passengers but to providing vehicles and related services to NMC, the entry is therefore not applicable to the transactions between SST and NMC.

"stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey"

"contract carriage" means a motor vehicle which carries a passenger or 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 motor cab notwithstanding that separate fares are charged for its passengers;

Sl No 10(ii) "rental service of transport vehicles with or without operators, other than (i) above liable to tax @ 9% SGST

The company is under the belief that the transaction would cover under this entry, however it is not clear as to whether the transaction would fall to cover as rental services or leasing of vehicle.

Sl. No 15(ii) of the Notification No 11/2017-State Tax (Rate) dated 29<sup>th</sup> June 2017 read with schedule II appended to MGST Act "(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration." The rate of tax would be the same rate of MGST for supply of like goods involved in transfer of title in goods.

Your applicant is engaged in supplying ' AC Green Bus' to Nagpur Municipal Corporation, on the basis of operation, repairs & maintenance, providing drivers, etc in accordance with the basic requirements of the scope of work, and requirements for operation schedules on trips/routes in area as prescribed/ directed by NMC. Prima fesie it seems that the transaction would be of the nature of transfer of right to use any goods for any purpose.

Such interpretation could be derived on the lines of judgement in case Tripura Syndicate Bus 122 STC 175, and in the case of Godavari Finance Co (2008) SCC 0107 S.C. it is observed that though the drivers were the employee of the owner of the vehicle they have to follow the directions and instructions of the transferee and thus the vehicles under the effective control of the hirer. In the case of Rajasthan State Road Transport Corporation, 1997 (007) SCC 481, while deciding the case of compensation, Supreme Court has observed that notwithstanding the fact that the driver would continue to be on the pay roll of the owner, he has to act under the instructions, control and command of the conductor and other officers and the effective control is transferred to hirer. In light of the position of law there is a possibility that the transaction is of the nature of transfer of right to use any goods for any purpose cannot be denied.





**Notification No. 12/2017- State Tax (Rate) dated 29th June, 2017.**

SI No 22 (a) Which reads as "Service by way of giving on hire- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or" liable to tax at Nil rate. This entry would be for hiring services the question whether the classification of transaction is of the nature of hiring services. In a lease, ownership lies with the lessor. The lessee has the right to use the equipment and does not have the option to purchase. Whereas in hire purchase, the hirer has the option to purchase. The hirer becomes the owner of the asset/ equipment immediately after the last installment is paid. In the case of Kotak Mahindra Finance Ltd. 2003-(184)CTR-0527-BOM, 2004-(265)-ITR-0114-BOM the Hon'ble Bombay high Court has held that

"There is a basic difference between "lease" and "hire". This difference is borne out by the basic difference in the meaning of the expression "property" and the expression "possession". A transaction of hire is essentially a contract of Bailment of a vehicle. In the case of a hire, only a license is given to the Hirer to use the vehicle for a temporary period the vehicle so hired - Melluish (Inspector of Taxes) v. BMI (No. 9) Ltd. (1996) 218 ITR 547 (HL). In the case of hire, the hirer has an option to buy the equipment which is one of the main distinguishing feature between the words "hire" and "lease". However, it is argued on behalf of the assessee that for the purposes of the above Entry, the word "hire" and the word "lease" should be read as equivalent. We do not find any merit in this argument."

From the conjoint reading of the agreement it seems that the agreement is not for hiring of AC Green buses. Considering this aspect possibly the transaction may not fall to cover under entry Si No 22 (a) Which reads as "Service by way of giving on hire- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or" covered under notification No 12 of 2017 state Tax (rate) dated 29/06/2017

**03. CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

In the present case, the applicant, M/s. SST Sustainable Transport Solutions India Pvt., Ltd., MIDC, Hingna Nagpur, has represented before the authority for advance ruling regarding classification of their services.

In their application, M/s. SST Sustainable Transport Solutions India Pvt., Ltd., MIDC, Hingna Nagpur has informed that they have entered into a contract with Nagpur Municipal Corporation (Body constituted under Govt. of Maharashtra) for "operation and Maintenance of AC Green Buses run on Bio Ethanol Fuel for Nagpur Urban Region"

and are providing services relating to transport of passengers in following aspect.

1. Providing Bus with Driver
2. Providing fuel for buses
3. Repair and Maintenance of Buses
4. The operator has set up Workshop and Service station for maintenance of buses
5. The NMC pays to M/s SST Sustainable Solutions India Pvt Ltd rate as per effective run kilometres.
6. The route and the fare is decided and collected by NMC.

Further the appellant claims that the service should be classifiable under Chapter Heading 9966-Services by way of giving on hire to a State Transport undertaking, a Motor Vehicle meant to carry more than 12 passengers, does not appear to be correct as the vehicles are rented to NMC which is not a state transport undertaking.

The contention of appellant does not appear to be correct as the vehicles are rented to NMC which is a body constituted under Govt. of Maharashtra and not a State Transport undertaking.

Looking into the nature services provided by the appellant to NMC this office is of the view that the services are of the nature of Motor Cab (Motor vehicle designed to carry passengers) where the cost of fuel is included in the consideration charge from the service recipient and falls under service code 996601 attracting GST @ 5% (with no ITC) or 12% (with ITC) [Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017].

**04. HEARING**

The case was taken up for Preliminary hearing on dt. 11.09.2018 when Sh. Sanjay Gadkari, GST Practitioner along with Sh. Sopan Jachak, Sh. Ashish Sharma, Company Secretary and Sh. Varad Gokhale operation manager appeared and requested for admission of application as per contentions in their ARA. Nobody was present from the side of Jurisdictional Officer.

The application was admitted and called for final hearing on 19.09.2018, Sh. Sanjay Gadkari, GST Practitioner along with Sh. Sopan Jachak, Sh. Varad Gokhale operation Manager and Sh. Manish Agarwal, C.A. appeared and made oral and written submissions. Jurisdictional Officer, Sh. Paras Chaure, Supt., Principal Commissioner of GST, Nagpur appeared and made written submissions.



05. OBSERVATIONS

We have gone through the facts of the case, documents on record and the submissions made by both, the applicant as well as the department.

From the submissions made by the applicant we find that the issue is pertaining to buses which are hired by the NMC from the applicant. The facts are that the applicant has entered into an agreement with NMC and as per the agreement, they are providing the Services of Running AC Green City Buses for Transport of General Public, for which NMC is paying them Service Charges calculated on the Total Run effective kilometers and the fare from the passengers is collected by NMC. The applicant has submitted that they are providing the Buses along with Driver, Fuel & Maintenance for use of General Public at Large which can be seen from the following :-

1. They are providing Bus with Driver to NMC for transportation of passengers.
2. They are also providing fuel for the Buses
3. Repair & maintenance of the buses are also undertaken by the applicant for which they have their own workshop and service station.
4. NMC is paying to the applicant, Service Charges on the basis of per Effective Run kilometres.
5. The route of the Buses & the applicable fare is decided and collected by the NMC from the passengers.

From the above it is clearly seen that NMC is providing transportation services to the passengers and the applicant, for such transportation, is supplying to NMC Buses along with drivers, fuels, maintenance, etc. In effect we find that there is no connection between the applicant and the passengers. We find that the applicant is just hiring out these AC Buses to NMC and we also find that the effective control is with the applicant so far as the Buses are concerned which are provided to NMC. We also find the Bus Routes are decided by NMC as also the Bus Fares, which are collected from the passengers. Hence it is crystal clear that in the subject case the transaction would be of the nature of transfer of right to use any goods and the amounts received by them on kilometer basis would be considered as hiring charges.

It has been rightly pointed out by the applicant that the nature of transaction between the applicant and NMC is of the nature of leasing/renting supply and not of charging fare to the passengers. Since the NMC has received a clarification from the department that the services provided by them i.e. transportation of passengers, are not taxable under the GST laws they are refusing to pay GST to the applicant on hiring charges paid. Thus the applicant has raised the question as follows:-

*"Under which Chapter Heading / Service Code our activity will classify?"*

We now take up the issue/question raised by the applicant as under:-

As per sub-clause (f) of clause 5 of Schedule II appended to both, the CGST Act, 2017 and the MGST Act, 2017 "transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration: would be considered as Supply of Services.

In the subject case the applicant vide Service Provider Agreement entered into by them with NMC have transferred of right to use the goods i.e. AC Buses belonging to them. The said rights as per the agreement have been transferred to NMC for a period of 15 years from the commercial operations date (COD). COD in the agreement has been defined as the date on which period of 6 months are completed


from the date of execution of the agreement. From the terms of payment mentioned in the agreement between the applicant and NMC it is seen that:

- i. NMC shall pay to the applicant an amount on the basis of kilometers logged by the AC Buses.
- ii. The applicant shall submit invoice at the end of each 10 days and NMC, within 15 days of receipt of invoice shall verify the same and make payments.
- iii. NMC has given a guarantee that the Buses so provided to them would travel a number of kilometers not less than 68,000 kilometers per Bus per year.
- iv. There is an annual assured payment to be made by NMC to the applicant if the minimum number of kilometers are not travelled.
- v. There is also a clause for payment for excess kilometers travelled by the said Buses and finally
- vi. There is also a clause for revision of kilometer charges.

In view of the terms of the agreement it is very clear that in the subject case there is transfer of the right to use any goods (Buses) for any purpose i.e for transportation purpose and for a specified period of 15 years for cash. Thus as per sub-clause (f) of clause 5 of Schedule II appended to both, the CGST Act, 2017 and the MGST Act, 2017 the subject activity of the applicant would be considered as Supply of Services.

Now we shall arrive at the rate of tax that the applicant would have to discharge on amounts received by them for such services rendered by them.

The relevant clause of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is reproduced



Sl No.	Chapter Section or Heading	Description of Service	Rate	Condition
(1)	(2)	(3)	(4)	(5)
10	Heading 9966 (Rental services of transport vehicles)	(i) Renting of motorcab where the cost of fuel is included in the consideration charged from the service recipient.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]
		(ii) Rental services of transport vehicles with or without operators, other than (i) above.	9	--

The parallel Sr. No. 10 in Notification No. 11/2017-State Tax (Rate) dated 29.06.2017, mentioned by the applicant is the same.

From the discussions above we find that the applicant is rendering services to NMC by way of giving out on rent/hire, Buses which are further used by NMC for transportation of passengers. Such renting of Buses by the applicant squarely falls under Sr. No. 10, Heading No 9966 sub clause (ii) as rental Service of transport vehicles, in this case with operators and therefore attracts CGST and SGST @ 9% each on remuneration received for such services rendered by the applicant.

Here we may also add that the correspondence dated 23.08.2017 made by the department to confirm that as per Sl No. 15(c) of Notification No. 12 of 2017-Central tax (Rate) dated 28.06.2017, stage carriage other than air-conditioned stage carriage attract "NIL" rate of GST is applicable to NMC on their



further services provided to passenger by way of transportation. The service rendered by the applicant to NMC by way of renting of AC Buses are covered under Sr. No. 10, Heading No 9966 sub clause (ii) as mentioned and discussed above and are therefore taxable.

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

**ORDER**

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 68/2018-19/B-

129

Mumbai, dt.

15/10/2018

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

Question :- Under which Chapter Heading / Service Code our activity will classify ?


Answer :- The activity undertaken by the applicant in the subject case is supply of services and will be classified under Sl. No 10(ii), Heading 9966 of the Notification No 11/2017-Central Tax (Rate) dated 28<sup>th</sup> June 2017.



  
B. V. BORHADE  
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax,
5. . Joint commissioner of State tax , Mahavikas for Website.

  
PANKAJ KUMAR  
(MEMBER)  
**CERTIFIED TRUE COPY**

  
MEMBER  
ADVANCE RULING AUTHORITY  
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.