

**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		27AAMCS2311K1Z9, cMsinfo.123
Legal Name of Applicant		CMS Info Systems Limited
Registered Address/Address provided while obtaining user id		CMS House, Plot No. 91, street No.7, MIDC, Morol, Andheri (East), Mumbai - 400 093
Correspondence address, if different from above		Silver Metropolis, 11 <sup>th</sup> Floor, Jay Coach Compound, Off. Western Express Highway, Goregaon East, Mumbai - 400 063
Details of application		GST-ARA, Application No. 08 Dated 20.12.2017
Concerned officer		Central GST, Range- I, Division -X, Mumbai (East)
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in brief)	The applicant is having cash management network pan India.
Issue/s on which advance ruling required		(iv) admissibility of input tax credit of tax paid or deemed to have been paid (v) determination of the liability to pay tax on any goods or services or both. (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
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 M/s. CMS Info Systems Limited, the applicant, seeking an advance ruling in respect of the applicability of GST on:

1. Whether supply of such motor vehicles as scrap after its usage can be treated as 'supply' in the course or furtherance of business and whether such transaction would attract GST? If yes, please provide the rate of GST and/or Compensation Cess.
2. If the answer to Question 1 is in affirmative, whether Input tax Credit is available to CMS Info Systems Ltd. ('CMS' or 'the applicant') on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business and supplied post usage as scrap?

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-

"Statement of relevant facts having a bearing on the question(s) raised:

The applicant is having cash management network pan India. During the course of providing cash management services, the applicant is engaged in following activities:

- Providing ATMs and installing the same at various locations across India
- Managing cash circulation through transporting cash from currency chests to bank branches
- Cash pick up and delivery from and to dedicated banks.

Such transportation of cash is done through security vans popularly known as cash carry vans. The applicant purchases raw motor vehicles and with the requisite fabrications, gets it converted to cash carry vans. The applicant also pays GST on fabrication. For this purpose, the applicant purchases motor vehicles and pays GST (Goods and Services tax). Credit of such GST is not availed by the Applicant presently. While purchasing cash carry vans under pre-GST era, the applicant had paid Central Excise Duty as well as Value Added tax.

When these vans cannot be used further, the applicant sells these motor vehicles as scrap. In certain cases, instead of purchasing motor vehicles, the applicant prefers to hire these motor vehicles.

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):

The applicant presents its interpretation of law for each of the above questions hereunder. The applicant hereby submits that each of the following submission is without prejudice to each other:

Question 1.

Whether supply of such motor vehicles as scrap after its usage can be treated as 'supply' in the course or furtherance of business and whether such transaction would attract GST? If yes, please provide the rate of GST and/or Compensation Cess.

The applicant is supplying motor vehicles as scrap after using the same. Therefore, the issue raised is whether such transaction can be considered to be 'supply' in the eyes of GST Law. In this regard, it would be worth analysing Section 7 of Central GST Act, 2017 which reads as under:

*"Section 7. Scope of supply.*

*(1) For the purposes of this Act, the expression "supply" includes—*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II."*

On analysing the above definition, it may be observed that only when the transaction is in the course or furtherance of business, the transaction would be treated as supply.

For reaching to a conclusion whether the transaction is supply or not, it is important to understand the term 'business'. Section 2 defines business as under:

*"Section 2 (17) "business" includes—*

*(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*

*(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*

*(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*

*(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*

*(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*

*(f) admission, for a consideration, of persons to any premises;*

*(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*

*(h) services provided by a race club by way of totalisator or a licence to book maker in such club; and*

*(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."*

Clause (c) of the above definition may cause certain doubts that even if a stray transaction of selling scrap is covered under the definition of 'business'. However, it is very important to note that Clause (c) refers that such activity or transaction should be in the nature of any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity. Therefore, it is very important that to call some transaction/activity as business, it has to be in the nature of any 'trade', 'commerce' etc.

The terms trade or commerce are not defined in GST law and therefore, recourse may be taken to dictionaries.

Trade:

Cambridge dictionary: "the activity of buying and selling, or exchanging, goods and or services between people or countries"

Your dictionary: "Trade is defined as the general marketplace of buying and selling goods, the way you make a living or the act of exchanging or buying and selling something"

Commerce:

Oxford Dictionary: "the activity of buying and selling, especially on a large scale"

Cambridge dictionary: "the activities involved in buying and selling things"

From the above dictionary meanings, it appears that to consider something as business, it should be an 'activity' and not a stray transaction.

There was a question raised before Ministry of Finance whether the activity of selling old gold jewellery by an individual supplier comes within the purview of 'supply'. Finance Ministry in their Press Release dated 13.07.2017 clarified as under:

*"Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly the sale of old jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases. However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply"*

From the above clarification given by the Finance Ministry, it clearly appears that the intention of Government is not to treat all the transactions as 'supply' unless the same are carried in the normal course of business activities which are carried with an intention to engage supplier into the activities of buy and sell of relevant commodities/services.



Another important point which needs to be noted is certain activities are deemed to be 'supply' when specified in Schedule I. Clause 1 of Schedule I reads as under:

"*SCHEDULE 1*

*[See section 7]*

*ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION*

*1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets*

On analysing the above clause, it reveals that permanent transfer or disposal of business assets is also treated as supply. However, the important point to be noted is such transfer or disposal will be deemed to be supply only where input tax credit has been availed on such assets.

Therefore, the disposal of cash carry vans should not be regarded as supply and no GST should be payable since the applicant is not in the business of selling cash carry vans and the applicant has not availed any input tax credit on such asset.

Question 2

If the answer to Question 1 is in affirmative, whether Input tax Credit is available to CMS Info Systems Ltd. ('CMS' or 'the applicant') on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business and supplied post usage as scrap?

In any case, if the stray transaction of sell of cash carry van is considered to be supply then the bar of taking input tax credit under Section 17 (5) would not be applicable.

The relevant extract of Section 17 (5) reads as under:

*"Section 17 (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:*

*(a) motor vehicles and other conveyances except when they are used—*

*(i) for making the following taxable supplies, namely:*

*(A) further supply of such vehicles or conveyances; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving, flying, navigating such vehicles or conveyances;*

*(Emphasis supplied)*

The exception provided in clause (a) above stipulates that if the motor vehicles are used for making further taxable supply of such vehicles, input tax credit is available in respect of such motor vehicles.

It is also understood by the Applicant that many registered persons in the industry are availing input tax credit in respect of GST paid on lease rental charges of cash carry vans hired by them. If input tax credit can be claimed in respect of hire charges, on the grounds of equity, the credit should also be allowed on outright purchase of such vehicles.

In the present case, if the stray transaction of sell of cash carry van is held to be supply then input tax credit shall be available to the Applicant in terms of exception provided in Section 17 (5) (a) of Central GST Act, 2017.

SUBMISSION dt.27.02.2018

There should not be additional inclusion of words while interpreting the provisions of a statute. The provisions must be construed strictly on the basis of plain language used by the legislature

It is a well-settled principle of law that at first one has to apply "literal interpretation" and only in cases of absurd results, one has to apply "purposive interpretation. It is well settled law that while interpreting a statute the basic principle of literal rule of interpretation has to be followed. In light of the above submission, Applicant rely on the decision of Hon'ble Supreme Court in the case of *B. Premanand v. Mohan Koikal*, (2011) 4 SCC 266, which is binding upon the Advance Ruling Authority also. The relevant portion of the said decision is as follows:

*"9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. Securities and Exchange Board, AIR 2004 SC 4219."*

SUBMISSION dt.05.03.2018

Without prejudice to our application and submissions during the personal hearing, we wish to add and submit as under with reference to query on Input Tax Credit available on purchase of Cash Vans used to transport cash and other valuable items from clients premises (usually banks)–

1) As per Section 17(5) of the Central Goods and Services Tax Act, 2017 –

*"Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(a) motor vehicles and other conveyances except when they are used-*

*(i) for making the following taxable supplies, namely:-*

*(A) further supply of such vehicles or conveyances; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving, flying, navigating such vehicles or conveyances;*

*(ii) for transportation of goods;*

*(b)*

*(Emphasis Supplied)*

2) The term "goods", "money" and "motor vehicle" have been defined as per Section 2 of the said act, as follows:

*"Sec. 2 - In this Act, unless the context otherwise requires-*

*(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"*

*(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;*

*(76) "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);"*

*(Emphasis supplied)*

3) In view of the above legal provisions, the applicant humbly submits as under –

- a. The applicant is owner of Cash Vans – these are dedicated vehicles which have been fabricated only for transportation of cash and other similar valuables. These vehicles are used by the Banks for transportation of cash and bullion;
- b. The Cash Vans are classified as "Transport Vehicle" as per the Notification issued under sub-section (4) of section 41 of the Motor Vehicles act, 1988 (59 of 1988) dated the 19th June, 1992, (The Notification is attached herewith for your ready reference as *Annexure 'A'*);



- c. The Cash Vans if procured on or after 01<sup>st</sup> July, 2017 is chargeable to Goods and Services Tax;
- d. The Applicant on perusal of the provision of Law stated above wishes to claim Input Tax Credit paid on purchase of such vehicles based on following interpretation –
- As per provisions of Section 16 of the CGST Act - Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. As the applicant is going to use the said vehicle in furtherance of the business of transporting valuables (cash and bullion), we feel Input Tax Credit shall be available relying provisions of Section 17(5)(a)(ii) (supra);
  - The applicant feels the valuables (cash and bullion) as transported is goods and not money in the given context. The applicant is given a consignment by the recipient of its service to deliver the same to an agreed premises for which a remuneration is given. Hence no doubt the valuable transported is *money* but the same in the given context for the applicant is not money but only a consignment/ goods for delivery. For this we need to refer the opening remarks of Section 2 which defines various terminologies under the Act – it states – *"In this Act, unless the context otherwise requires,"*;
  - "Goods" includes all materials, commodities, and articles. [Constitution of India, Art. 366(12)] Reference – Advanced Law Lexicon, P. Ramnatha Aiyar's – 4<sup>th</sup> Edition;
  - "Money" means a medium of exchange authorised or adopted by a domestic or foreign government as a part of its currency [(English) Uniform Civil Code, 1978, S. 1-201(24)] – Reference – Advanced Law Lexicon, P. Ramnatha Aiyar's – 4<sup>th</sup> Edition;
  - Money is "that which passes freely from hand to hand throughout the community in final discharge of the debts and full payment for commodities; being accepted equally without reference to the character or credit of the person who offers it, and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities." (per DARLING, J., *Moss v Nancock*, 68 LJQB 660 @ 1899-22 B 111) - Reference – Advanced Law Lexicon, P. Ramnatha Aiyar's – 4<sup>th</sup> Edition.
- Therefore, the purpose of excluding money from these definitions is not to charge GST on mere supply of money.

- 4) Without prejudice to above submissions, we would like to further submit the following:
- a. Reference is made to Central Goods and Services Tax Rules, 2017 ('CGST Rules') in relation to E-way bills. E-way bills Rules have been introduced in the GST regime vide Notification No. 27/2017 – Central Tax dated 30.08.2017, to monitor movement of goods from one location to another. As per Rule 138 (14) of CGST Rules, E-way bill is not required to be generated in cases where certain 'goods' as specified in Annexure are 'transported'. It is interesting to note that one such goods mentioned is "currency". Relevant extract of the said sub-rule along with Annexure are reproduced below:

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated-

(a) where the goods being transported are specified in Annexure ...

ANNEXURE [See rule 138 (14)]

Sr. No.	Description of Goods
(1)	(2)
6	Currency

The term 'currency' has been defined in the Foreign Exchange Management Act, 1999. The extract of the definition is reproduced herein below:

(h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

Accordingly, with reference to the above definition of the term currency, it may be noted that currency includes, inter alia, currency notes, cheques, draft.

- b. It is pertinent to note that the words used in the CGST rules are "goods being transported". Thus, e-way bill is not required to be generated when currency is transported. It may be appreciated that in spite of specific exclusion of money from the definition of goods, currency is considered as goods in the Annexure. Further, even in the case of applicant, currency is being 'transported' in a secured vehicle by the applicant.
- c. Accordingly, 'currency' should be treated as goods. And as the Applicant is transporting currency in the secured vans, which is treated as goods as per the said CGST Rules/ Notification, therefore applicant shall be eligible for input tax credit of CGST, MGST, IGST and Compensation Cess with respect to cash carry vans.
- 5) Further, it is also submitted that as per Section 17(5) (a) (ii) of Central Goods and Services Act, 2017 and Maharashtra Goods and Services Tax Act, 2017, input tax credit of GST paid on motor vehicles is available *inter alia* in a case where the motor vehicle is used for transportation of 'goods'. The question requiring consideration then is whether the same definition of goods shall be applied for interpretation of Section 17 (5) of Central GST Act, 2017.

In this regard, the applicant humbly submits that for the purposes of Section 17 (5) of Central GST Act, 2017, money shall be considered as 'goods' and therefore, input tax credit shall be available with respect to such cash carry vans.

One of the conditions to issue 'C' form under the Central Sales Tax ('CST') Act, 1956 (i.e. to buy goods at a concessional rate of Central Sales Tax) is that the goods to be bought against 'C' Form must be used for manufacturing or processing of 'goods'. Here, it would be worthwhile to take note of decision delivered by Hon'ble Supreme Court under the erstwhile Central Sales Tax ('CST') Act, 1956. In case of *Printers (Mysore) Ltd. vs. Asstt. Commissioner Tax Officer 1994 SCC (2) 434 (copy attached for your reference as Annexure 'B')*, the issue on hand was 'newspaper' was excluded from the definition of 'goods' under CST Act, 1956. Consequently, department expressed the view that 'C' form would not be available for buying newsprint for printing newspapers. In other words, the purchasers were required to pay higher rate of tax and benefit of concessional rate of CST was not available to them. Having regard to the intention of exclusion of 'newspaper' from the definition of goods, Hon'ble Supreme Court observed that the definition of 'goods' was amended to adhere to Constitution of India i.e. not to levy CST on sale of newspapers which is constitutionally not permitted and the same interpretation cannot be adopted for the purpose of another provision and take away the benefit available to assessee. In other words, the Principle provided by Hon'ble Supreme Court is 'for the purpose of taxability, definition of 'goods' shall exclude newspapers whereas for the purpose of C Forms, 'goods' shall include newspapers.

Similarly, in the present case, for the purpose of taxability, 'money' is excluded from the definition of 'goods' whereas for the purpose of input tax credits, 'goods' would include 'money'.

- 6) Our case is more strengthened in light of the fact that cash carry vans are registered as 'goods carriage' under Motor Vehicles Act, 1988. The definition of 'goods' under Motor Vehicles Act, 1988 reads as under:

"goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling



in the vehicle.”

On analysing the above definition, it can be observed that under Motor Vehicles Act, goods includes money and consequently, all cash carry vans of the applicant are considered as ‘goods carriage’.

Therefore, though there is express definition given in Central GST Act, 2017 for goods, the term ‘goods’ shall include ‘money’ for the purpose of Section 17 (5) (a) of Central GST Act. Consequently, the applicant shall be eligible for input tax credit of CGST, MGST, IGST and Compensation Cess with respect to cash carry vans.

- 7) Cash carry vans are also used for transportation of gold i.e. goods and therefore, Input tax Credit thereof shall be available to the applicant.

In the present case, the Applicant provides various cash management services including the following to nominated banks as per scope of each Agreement:

- the transportation of cash or other valuable items like Gold and silver bullion, coins, ingots bullion and security papers, documents etc.;
- for replenishment of cash in ATM’s as per agreement;
- for picking up cash from retail outlets like Reliance, malls, railway stations and deposits

It would be worthwhile to note that bullion management includes transportation of gold in the secured cash carry vans.

The applicant undertakes to transport gold and silver bullion, coins and ingots from various locations such as:

- From airports to safe vaults of banks:

When gold is imported from outside India, the applicant transports such gold bullion, coins, ingots from the airport/ port where importation takes place to the safe vault where it will be stored safely.

- From one branch of the bank to another branch

The applicant also transports gold, jewellery from one branch of the bank to safe vault where such gold is stored safely.

Therefore, one needs to analyse Section 17 (5) of Central GST Act, 2017 in this factual matrix. The said Section is reproduced hereunder:

“Section 17. Apportionment of credit and blocked credits.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

- (a) motor vehicles and other conveyances except when they are used—
  - (i) for making the following taxable supplies, namely:
    - (A) further supply of such vehicles or conveyances; or
    - (B) transportation of passengers; or
    - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
  - (ii) for transportation of goods; ...”

(Emphasis supplied)

Therefore, as per the above provision, input tax credit is available in respect of motor vehicles and other conveyances when they are used for transportation of ‘goods’. Such transportation of goods may not be a taxable supply. In fact, the transportation of goods may be done once in the life cycle of the motor vehicle. However, as long as such motor vehicle is used for transportation of goods, input tax credit is available.

- 8) In the present case, the applicant provides various services including the following wherein dedicated fabricated vehicles i.e. cash carry vans are used for transportation of money and also other valuable items (including gold) such as:

- Cash pick-up and cash Deliveries;
- Cash Van Hire Services;
- RBI Coins Transportation;
- Secured Cash Vaulting as per RBI guidelines;
- Bullion Management.

Extract of one such sample agreement between the applicant and Decium Financial Ltd. dated 16 August, 2016 (which is in operation till date) providing scope of services which includes bullion management, is attached herewith for your ready reference as Annexure ‘C’.

There is no dispute to the fact that gold and silver are nothing but goods. In common parlance, gold is not considered as money; but a commodity which is capable of being bought and sold. Accordingly, gold and silver are movable properties squarely falling within the definition of ‘goods’.

Therefore, these cash carry vans are also used for transportation of gold and other valuable goods. Consequently, as per Section 17 (5) of Central GST Act, 2017, the input tax credit of CGST, MGST, IGST and Compensation Cess shall be available to the applicant.

In view of the above, we request you to pass a suitable Advance Ruling stating Input Tax Credit shall be eligible in respect of GST/Cess paid on purchase of cash carry vans to the Applicant.

### 03. CONTENTION – AS PER THE CONCERNED OFFICER

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

“(3) The Point wise comments are as follows:-

(i) As per Section 7(1)(a) the activity of supply of vehicle comes under the ambit of ‘Scope of Supply’ as it is clearly states all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Also as per Section 2(17)(a) “Business” includes- any trade, commerce, manufacture, profession, vocation, adventure, wager or nay other similar activity, whether or not it is for pecuniary benefit. And also as per Section 2(17)(c) “Business” includes- any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transactions.

Therefore the activity of supply of vehicles as scrap after usage shall fall under the definition and scopes of supply comes under the definition of Business.

(ii) Further it is also clear that the said activity is not covered under a negative list given under Section 7(2) and Schedule-III of CGST Act, activities or transactions which shall be treated neither as a supply of goods nor a supply of services.

Schedule-III of the Act gives :-

- (i) Services by an employee to the employer in the course of or in relation to his employment.
- (ii) Services by any court or Tribunal established under any law for the time being in force.
- (iii) (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;



- (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or  
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
- (iv) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.  
(v) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.  
(vi) Actionable claims, other than lottery, betting and gambling.

Accordingly the activity of supply of scrap shall be covered under scope of the supply and shall be taxable at appropriate rate. Depending upon the type of sale of motor vehicles, the GST rate would be applicable:-

- (i) If the motor vehicles are sold as 'old and used motor vehicles' then the rate of CGST would be applicable as referred under Notification No.01/2017-Central Tax (Rate) and 1/2017- Integrated Tax(Rate) depending upon under which Schedule ( and the Chapter Heading) it falls.  
(ii) If the motor vehicles are sold as scrap then depending upon the material of which they are made, CGST rate and cess would be applicable accordingly.
- (4) With regards to the 2<sup>nd</sup> question Input Tax Credit on motor vehicles is not allowed as per Section (17) (5) of CGST Act as it clearly states that:

"Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :

- (a) Motor vehicles and other conveyances except when they are used—  
(1) for making the following taxable supplies, namely:-  
(A) further supply of such vehicles or conveyances; or  
(B) transportation of passengers; or  
(C) Imparting training on driving, flying, navigating such vehicles or conveyances;  
(ii) for transportation of goods;

Since the applicant is engaged in cash management services and the same does not fall within exceptional cases as mentioned above including clause (ii) of Section 17(5) (a) because as per definition of goods in Section 2(52) of CGST Act, 2017 "goods" means "every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"

As money has been excluded from the definition of goods, the cash management services cannot come under the purview of "transportation of goods". Hence Input Tax Credit is not available to the applicant.

The above submissions are made only as preliminary submissions about the admissibility of the application and detailed submissions would be filed at a later stage. From the discussion as made above tax is leviable under GST Act, 2017 and Input Tax Credit is not applicable. Hence, it is prayed that the application may be rejected at this stage only."

#### 04. HEARING

The case was taken up for preliminary hearing on dt.14.02.2018 when Sh. Jayesh Gogri and Ms. Payal Shah, both Chartered Accountants, attended. On dt.27.02.2018, Sh. Jayesh Gogri, and Sh. Manish Goel, Chartered Accountant attended alongwith Sh. Abraham Joseph (Associate Director (Taxation) and reiterated the contention as made in the written submission. Written submission was tendered during hearing and a request was made to make a further submission. The same has been tendered. None was present on behalf of the concerned officer from the Central Tax Office. However, a written submission has been furnished.

#### 05. OBSERVATIONS

We have gone through the facts of the case. It has been informed thus -

- The applicant is having cash management network pan India. Such transportation of cash is done through security vans popularly known as cash carry vans.
- The applicant purchases raw motor vehicles and with the requisite fabrications, gets it converted to cash carry vans. For this purpose, the applicant purchases motor vehicles and pays GST and also pays GST on fabrication.
- While purchasing cash carry vans under pre-GST era, the applicant had paid Central Excise Duty as well as Value Added tax. When these vans cannot be used further, the applicant sells these motor vehicles as scrap.
- In certain cases, instead of purchasing motor vehicles, the applicant prefers to hire these motor vehicles.

We begin to discuss the facts and the questions posed.



### Question 1

Whether supply of such motor vehicles as scrap after its usage can be treated as 'supply' in the course or furtherance of business and whether such transaction would attract GST? If yes, please provide the rate of GST and/or Compensation Cess.

The activity of disposal of the vehicles as scrap amounts to supply of goods but it needs to be seen, as to whether it amounts to a supply of goods under the GST Act. Hence, we refer to the following provisions of the GST Act -

**2 (17) "business" includes—**

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

**7. (1) For the purposes of this Act, the expression "supply" includes—**

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

The disposal of the scrap vehicles for consideration is a sale and section 7 explaining the expression 'supply' covers supply of goods such as sale or disposal made for a consideration. Section 7, further, says that the supply has to be in the course or furtherance of business. With regard to this, we see that the applicant is in the business of having a cash management network involving transportation of cash. The disposal of the cash carrying vans is a transaction in connection with or incidental or ancillary to the business of having a cash management network. As and when the vehicles become scrap, they have to be disposed off and the proceeds therefrom to be identified as income for the business which is reflected in the Profit & Loss Account of the business. Buying new assets and discarding the old and unusable assets is an activity in the course of carrying on of the business. Hence, we conclude that supply of such motor vehicles as scrap after its usage is an activity of 'supply' in the course or furtherance of business and such transaction would attract GST. However, we see that the applicant has referred to the following to make a claim that the impugned transaction would not be a 'supply' under the GST Act :

**SCHEDULE I [See section 7] - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

**SCHEDULE II [See section 7] - ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

With regard to the above, the applicant has argued that permanent transfer or disposal of business assets is also treated as supply but such transfer or disposal will be deemed to be supply



only where input tax credit has been availed on such assets. We are not agreeable to this reasoning of the applicant. Schedule I is for activities to be treated as 'supply' even if made without consideration. This derives colour from the fact that 'supply' in section 7 says that supply is one which is made or agreed to be made for a consideration. Therefore, Schedule I comes up with cases made exceptional for being treated as 'supply' for the reason that they lack the crucial element of 'consideration'. As regards Schedule II, the same classifies the supplies into supplies of goods or services. Schedule II begins with the premise that the activities are 'supply'. For the facts before us, we find that there is a supply of cash vans, which are 'goods', for a consideration and the transaction is in the natural course of business. The transaction and the provisions are obvious. In view thereof, we do not find merit in the argument of the applicant.

Having seen that the transaction amounts to a 'supply' under the GST Act, we move on to the next aspect which the applicant desires to know and which is the rate of GST and Compensation Cess. Chapter 87 of the Customs Tariff covers motor vehicles. The applicant has not informed the Customs/Excise Tariff Heading. Neither has any copy of the invoice effecting the supply been tendered. The applicant has submitted a sample agreement copy which it enters into while delivering services of cash management. However, the same throws no light on the type of the motor vehicles to be used. Further, whether the vehicles are sold as scrap and unusable OR sold as old vehicles is not found confirmed from any document. It is generally seen that there is surrender of the RTO Registration Book when the vehicles are disposed off as scrap. Hence, it needs to be ascertained as to whether the vehicles are sold as scrap. For vehicles sold as scrap which does not amount to sale of a vehicle as such, the rate of the material sold as scrap would apply. For vehicles sold as vehicles, a perusal of the notifications issued for the purposes of the GST Act reflects thus -

1. Notification No.2/2017-Central/State Tax (Rate) - (as amended from time to time) enlisting the goods exempted from GST does not cover the impugned cash carrying vans.
2. Notification No.1/2017-Central/State Tax (Rate) (as amended from time to time) enlisting the goods taxable to GST at various rates -
  - a. Schedules I to III and V to VI do not cover the impugned goods.
  - b. Entries in Schedule IV would cover the impugned goods.
3. Notification No.1/2017-Compensation Cess (Rate) (as amended from time to time) enlisting the goods taxable to Compensation Cess under the Goods and Services Tax (Compensation to States) Act, 2017 at various rates -
  - a. This Notification enlists goods from the Chapter 87.





In absence of the requisite details before us, we have to ask the applicant to go through the Notification No.1/2017-Central/State Tax (Rate) and Notification No.1/2017-Compensation Cess (Rate), as amended from time to time. We would now turn to the next question.

**Question 2**

*If the answer to Question 1 is in affirmative, whether Input tax Credit is available to CMS Info Systems Ltd. ('CMS' or 'the applicant') on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business and supplied post usage as scrap?*

There is a difference of opinion with regard to the decision of this question. The views of each Member are as follows :

**As per Sh. Borhade, Member**

This question pertains to the eligibility to avail Input Tax Credit (ITC) on the purchase of cash carry vans which are used for the cash management business. We have seen above that the disposal of the cash carry vans as scrap vehicles is a 'supply' in the course of furtherance of business and is amenable to GST. In view thereof, the applicant queries as to whether ITC would be available on the purchase of cash carry vans which are later disposed off as scrap. For answering this, I would have to refer to the relevant provisions relating to ITC and we find thus-

**INPUT TAX CREDIT**

**Section 16 - Eligibility and conditions for taking input tax credit**

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

**Section 17 - Apportionment of credit and blocked credits.**

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher: Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

As can be seen from the above, except in certain situations as enumerated, ITC is not available in respect of motor vehicles. Hence, I see the exceptions.

As can be seen, the impugned activity of providing cash management services not being for transportation of passengers OR for imparting training on driving, flying, navigating such vehicles or conveyances, it would not be covered by the exceptions in (B) and (C) of sub-section 5(a)(i). Sub-section 5(a)(i)(A) is about making "further supply of such vehicles or conveyances". The words "further supply" herein are in the nature of "resale". It should be noted that it is not



mentioned as being just “*supply of such vehicles or conveyances*”. The word “further” before the word “supply” has to be given its proper weightage. Here, the legislature intends to cover motor vehicles which are purchased for the purpose of being sold. In this category, we have the chain of the distributors/dealers of motor vehicles who purchase from the manufacturers for the downward sale to the final customer. The use of the word “further” is indicative of a further supply and not such a supply as in the present case which is the disposal as a scrap and which happens after the motor vehicle has been used till its full working life. In view thereof, the impugned activity of providing cash management services not being for making a further supply of the motor vehicles would not be covered by the exception in (A) of sub-section 5(a)(i). I find that the applicant has argued that as per well-settled principle of law at first one has to apply “literal interpretation” and only in cases of absurd results, one has to apply “purposive interpretation”. However, this argument would not apply to the instant case. Here, the word ‘further’ has to be given the meaning as is intended by the Legislation. And I am convinced that there can be no other intention than the one as had by me.

Then comes sub-section 5(a)(ii) which speaks about exception if the motor vehicles are used for transportation of goods. The word ‘goods’ has been defined thus -

**“Definitions. 2. In this Act, unless the context otherwise requires,—**

**(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;**

**(75) “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;**

I find that the applicant has also mentioned that besides ‘cash’, the cash carry vans are also used for transport of bullion. Bullion not being excluded from the definition of ‘goods’, there arises no issue. However, the applicant has raised the question in terms of ‘cash carry vans’ and hence, “cash” would be the goods which would be transported. “Cash” here is the Indian legal tender which is ‘money’ and I find that ‘money’ has been excluded from the definition of ‘goods’ for the purposes of the GST Act. Therefore, whether the word ‘goods’ as appearing in sub-section 5(a)(ii) would take colour from the definition of ‘goods’ is a question I need to ponder over. The applicant has argued that -

- The definition section 2 says that the definitions apply unless the context otherwise requires.
- Hence, here for the purpose of taxability, ‘money’ is excluded from the definition of ‘goods’ whereas for the purpose of input tax credits, ‘goods’ would include ‘money’.

The applicant has cited the case law in *Printers (Mysore) Ltd. And Another V. Assistant Commercial Tax Officer And Others.* (Civil Appeal No. 1550 of 1985). *Indian Newspapers Society V. State of Karnataka.* (Writ Petition No. 278 Of 1991). (And Other Appeals) [93 STC 95]. We could look at the facts and the decision in this case thus -



"The publishers of newspapers require various goods, hereinafter referred to as "the raw material", for producing, i.e., for printing and publishing their newspapers. The publishers are registered as dealers under the Act. They purchase their raw material from other registered dealers. Most of these purchases are inter-State purchases; in the hands of the selling dealers they are inter-State sales eligible to tax.

Section 8, read as a whole, says, inter alia : where a dealer purchases goods (being non-declared goods) required by him for use in the manufacture or processing of goods for sale and issues form "C" to the selling dealer, the selling dealer shall be liable to pay tax only at 4 per cent as per section 8(1) and not 10 per cent as provided in section 8(2), provided that the certificate of registration of the purchasing dealer specifies the class of goods purchased by him. (In case of declared goods, the selling dealer has to pay tax at the rate applicable to sale of such goods within the appropriate State.) It necessarily means that the selling dealer will collect (pass on) tax from the purchasing dealer only at the said concessional rate. The idea behind this provision is self-evident. It is to ensure that the price of the product manufactured by such purchasing dealers does not go up to the detriment of the consumers of those goods. The Parliament does not want to tax both the raw material and the finished goods at the full rate. Where the finished goods are meant for sale, the raw material utilised or consumed for the manufacture of said finished goods is taxed at the concessional rate, for the reason that the State derives revenue again by taxing the sale of the finished goods. However, it is not necessary that the finished goods are actually subjected to tax on their sale - for they may be exempted either by the Act or by a notification issued thereunder. It is enough that the finished goods are meant for sale. Ordinarily, of course, their sale is taxed.

The expression "goods" is defined in clause (d) in section 2. As originally enacted, the definition read : "(d) goods includes all materials, articles, commodities and all other kinds of movable property but does not include actionable claims, stocks, shares and securities". (The Central Sales Tax Act, 1956, came into force on January 5, 1957.) By amending Act 31 of 1958, the word "newspapers" was inserted in the said definition after the words "but does not include" and before the words "actionable claims, stocks, shares and securities". After the amendment, the definition reads as follows :

"goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities."

Now the situation is this : before the amendment of the definition of the expression "goods" by the 1958 Amendment Act, the publishers of the newspapers [who held the certificate of registration contemplated by section 8(3)(b)] were issuing forms "C" [declarations contemplated by section 8(4)(a)] and on that basis the selling dealer was collecting from them Central sales tax at the concessional rate of 4 per cent (in the case of non-declared goods). They were like any other manufactures in this respect. But after newspapers were excluded from the purview of the "goods" by the 1958 (Amendment) Act, the Central sales tax authorities took the stand that by virtue of the said amended definition, the printers/publishers of newspapers were not entitled to the benefit of section 8(3)(b) read with section 8(1)(b) and are, therefore, not entitled to issue forms "C". Their reasoning was this : since the expression "goods" does not take in newspapers, it cannot be said that publishers of newspapers are purchasing the goods (raw material) for use by them "in the manufacture or processing of goods for sale"; what they purchase may be goods but goods manufactured out of them (newspapers) are not goods; hence, they do not satisfy the requirement of section 8(3)(b). The result was that the publishers of newspapers were disabled from issuing forms "C" and hence became liable to pay tax at the higher rate of 10 per cent on goods (non-declared goods) purchased by them as raw material for producing (manufacturing) their newspapers, while all other manufacturers continued to enjoy the said benefit. ....

If a literal construction is adopted, it is conceded on all hands that the view taken by the Karnataka High Court is the correct one. But what the Madras and Kerala High Court have done is to take the spirit behind the amendment of the definition of the expression "goods" as well as the scheme underlying entry 54 of List II read with entries 92 and 92-A of List I of the Seventh Schedule to the Constitution and hold on that basis that the expression "goods" occurring in the latter half of clause (b) of section 8(3) does not exclude newspapers from its purview.

[clause (b) of sub-section (3) :

"The goods referred to in clause (b) of sub-section (1) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power."]

Now coming back to the amendment of the definition of "goods" in section 2(d) of the Central Sales Tax Act, the said amendment, brought in with a view to bring the said definition in accord with the amendments brought in by the Constitution (Sixth Amendment) Act (referred to hereinbefore) was actuated by the very same concern, viz., to exempt the sale of newspapers from the levy of Central sales tax. The amendment was not intended to create a burden which was not there but to remove the burden, if any already existing on the newspapers - a policy evidenced by the enactment of the Taxes on Newspapers (Sales and Advertisements) Repeal Act, 1951. This concern must have to be borne in mind while understanding and interpreting the expression "goods" occurring in the second half of section 8(3)(b). Now, the expression "goods" occurs on four occasions in section 8(3)(b). On the first three occasions, there is no doubt, it has to be understood in the sense it is defined in clause (d) of section 2. Indeed, when section 8(1)(b) speaks of goods, it is really referring to goods referred to in the first half of section 8(3)(b), i.e., on first three occasions. It is only when section 8(3)(b) uses the expression "goods" in the second half of the clause, i.e., on the fourth occasion that it does not and cannot be understood in the sense it is defined in section 2(d). In other words, the "goods" referred in the first half of clause (b) in section 8(3) refers to what may generally be referred to as raw material (in cases where they were purchased by a dealer for use in the manufacture of goods for sale) while the said word "goods" occurring for the fourth time (i.e., in the latter half) cannot obviously refer to raw material. It refers to manufactured "goods", i.e., goods manufactured by such purchasing dealer - in this case, newspapers. If we attach the defined meaning to "goods" in second half of section 8(3)(b), it would place the newspapers in a more unfavourable position than they were prior to the amendment of the definition in section 2(d). It should also be remembered that section 2 which defines certain expressions occurring in the Act opens with the words "in this act, unless the context otherwise requires". This shows that wherever the word "goods" occurs in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in clause (d). Ordinarily, that is so. But where the context does not permit or where the context requires



otherwise, the meaning assigned to it in the said definition need not be applied. If we keep the above consideration in mind, it would be evident that the expression "goods" occurring in the second half of section 8(3)(b) cannot be taken to exclude newspapers from its purview. The context does not permit it. It could never have been included by Parliament. Before the said amendment, the position was : the State could not levy tax on intra-State sale of newspapers; the Parliament could but it did not and entry 92-A of List I bars the Parliament from imposing tax on inter-State sale of newspapers; as a result of the above provisions, while the newspapers were not paying any tax on their sale, they were enjoying the benefit of section 8(3)(b) read with section 8(1)(b) and paying tax only at 4 per cent on non-declared goods which they required for printing and publishing newspapers. Their position could not be worse after the amendment which be the case if we accept the contention of the Revenue. If the contention of the Revenue is accepted, the newspapers would now become liable to pay tax at 10per cent on non-declared goods as prescribed in section 8(2). This would be the necessary consequence of the acceptance of Revenue's submission inasmuch as the newspapers would be deprived of the benefit of section 8(3)(b) read with section 8(1)(b). We do not think that such was the intention behind the amendment of definition of the expression "goods" by the 1958 (Amendment) Act. Even apart from the opening words in section 2 referred to above, it is well-settled that where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied."

It can be seen from the above case law that the Hon. Court went into the background of the taxation of newspapers. Thus, it was not just an exposition on the words "unless the context otherwise requires". I have come across yet another case law in *CST v. Union Medical Agency*, (1981) 1 SCC 51 : 1981 SCC (Tax) which says thus -

"14. It is a well-settled principle that when a word or phrase has been defined in the interpretation clause, prima facie that definition governs whenever that word or phrase is used in the body of the statute. But where the context makes the definition clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are, therefore, normally enacted subject to the usual qualification— "unless there is anything repugnant in the subject or context", or "unless the context otherwise requires". Even in the absence of an express qualification to that effect such a qualification is always implied.

18. There is no dispute with the proposition that the meaning of a word or expression defined may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in definition section, namely "unless the context otherwise requires". In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words in a particular section. But where there is no obscurity in the language of the section, there is no scope for the application of the rule *ex visceribus actus*. This rule is never allowed to alter the meaning of what is of itself clear and explicit. The authorities relied upon by the High Court are, therefore, not applicable."

Thus, the Hon. Courts have laid down that the context has to be seen. In the present case, money is not included in the definition of 'goods'. However as the applicant has pointed, the GST E-Way Rules in rule 138(14) refer to an Annexure which enlists the goods in respect of which no e-way bill is required to be generated. At sr. no.6 of this Annexure in column 2 about "Description of Goods", one finds mention of the word "currency". Thus, "currency" is goods where the goods being transported are specified in the Annexure in rule 138(14) of the GST E-Way Rules, the transportation of which would not require the generation of e-way bill. The rule stems from section 88 of the GST Act which requires that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed. I find entry no.117 in the Notification no.2/2017-Central/State Tax (Rate) (as amended from time to time) specifying the Schedule for goods exempted specifying the goods "Rupee notes when sold to the Reserve Bank of India". Notes become legal tender after they are issued by the Reserve bank of India. Till that time they are mere printed papers and not 'money' or 'currency' and hence, they are held exigible to GST, though at a NIL rate. In the present case, the ITC would be available when the motor vehicles are used for transportation of goods. Here, the ITC is of the tax paid in respect of the purchase of the motor vehicles and not of the goods being transported. To restrict



the ITC here to the case when only 'goods' as understood in GST are being transported in the motor vehicles would not be in the context of the provision. The applicant has rightly invited attention to the definition of 'goods' as appearing in the Motor Vehicles Act, 1988 which says thus -

*(13) "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;*

I find other definitions in the said Act, thus -

*(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;*

*(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;*

A goods carriage under the Motor Vehicles Act would transport goods and the definition of goods therein does not exclude 'money'.

In view of all above, I observe that I am in agreement with the claim of the applicant that the word 'goods' in sub-section 5(a)(ii) would not take colour from the definition of "goods" which excludes money therefrom. In consideration of the above, the impugned activity of providing cash management services involves use of the motor vehicles for transportation of 'goods'. The motor vehicles would be covered by the exception in sub-section 5(a)(ii) of section 17. Thus, the applicant would be entitled to the ITC on the purchase of the cash carry vans i.e motor vehicles used for transportation of goods, subject to the provisions of the Rules made in this regard.

**As per Sh. Pankaj Kumar, Member**

This question pertains to the eligibility to avail Input Tax Credit (ITC) on the purchase of cash carry vans which are used for the cash management business. I have seen above that the disposal of the cash carry vans as scrap vehicles is a 'supply' in the course of furtherance of business and is amenable to GST. In view thereof, the applicant queries as to whether ITC would be available on the purchase of cash carry vans which are later disposed off as scrap. For answering this, I would have to refer to the relevant provisions relating to ITC and we find thus -

#### **INPUT TAX CREDIT**

##### **Section 16 - Eligibility and conditions for taking input tax credit**

*(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.*

##### **Section 17 - Apportionment of credit and blocked credits.**

*(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*

*(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

*(a) motor vehicles and other conveyances except when they are used—*

*(i) for making the following taxable supplies, namely:—*

*(A) further supply of such vehicles or conveyances ; or*



*(B) transportation of passengers; or*

*(C) imparting training on driving, flying, navigating such vehicles or conveyances;*

*(ii) for transportation of goods;*

*(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher: Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.*

As can be seen from the above, except in certain situations as enumerated, ITC is not available in respect of motor vehicles. Hence, I see the exceptions.

As can be seen, the impugned activity of providing cash management services not being for transportation of passengers OR for imparting training on driving, flying, navigating such vehicles or conveyances, it would not be covered by the exceptions in (B) and (C) of sub-section 5(a)(i). Sub-section 5(a)(i)(A) is about making "further supply of such vehicles or conveyances". The words "further supply" herein are in the nature of "resale". It should be noted that it is not mentioned as being just "supply of such vehicles or conveyances". The word "further" before the word "supply" has to be given its proper due. Here, the legislature intends to cover motor vehicles which are purchased for the purpose of being sold. In this category, we have the chain of the distributors/dealers of motor vehicles who purchase from the manufacturers for the downward sale to the final customer. The use of the word "further" is indicative of a further supply and not such a supply as in the present case which is the disposal as a scrap and which happens after the motor vehicle has been used till its full working life. In view thereof, the impugned activity of providing cash management services not being for making a further supply of the motor vehicles would not be covered by the exception in (A) of sub-section 5(a)(i). I find that the applicant has argued that as per well-settled principle of law at first one has to apply "literal interpretation" and only in cases of absurd results, one has to apply "purposive interpretation". However, this argument would not apply to the instant case. Here, the word 'further' has to be given the meaning as is intended by the Legislation. And I am convinced that there can be no other intention than the one as had by me.

Then comes sub-section 5(a)(ii) which speaks about exception if the motor vehicles are used for transportation of goods. The word 'goods' has been defined thus -

**"Definitions. 2. In this Act, unless the context otherwise requires,—**

**(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;**

**(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;**

I find that the applicant has also mentioned that besides 'cash', the cash carry vans are also used for transport of bullion. Bullion not being excluded from the definition of 'goods', there arises no issue. However, the applicant has raised the question in terms of 'cash carry vans' and hence, "cash" would be the goods which would be transported. "Cash" here is the Indian legal



tender which is 'money' and I find that 'money' has been excluded from the definition of 'goods' for the purposes of the GST Act. However, it is found that the applicant has specifically mentioned in his application that they are engaged in "cash management service" which they have specifically mentioned as under :

- Providing ATMs and installing the same at various locations across India
- Managing cash circulation through transporting cash from currency chests to bank branches
- Cash pick up and delivery from and to dedicated banks.

Thus, from the above it is very clear that the applicant is engaged in cash management services. Further section 17(5) of the GST Act specifically mentions that -

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

*(a) motor vehicles and other conveyances except when they are used—*

*(i) for making the following taxable supplies, namely:—*

*(A) further supply of such vehicles or conveyances ; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving, flying, navigating such vehicles or conveyances;*

*(ii) for transportation of goods;*

Further, it is very clear that section 2(52) very clearly gives definition of goods which reads as under :-

*(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*

Thus from the above definition of 'goods', it very clear that 'money' is specifically excluded from the definition of 'goods' and therefore in no way input tax credit in respect of motor vehicles and other conveyances as envisaged in Section 17(5) (a) would be available in respect of transportation of money in motor vehicles as under GST law as money is specifically excluded from the definition of 'goods' and therefore 'money' is not to be treated as 'goods' because of specific exclusion.

The intent of the legislature in excluding 'money' from the definition of 'goods' can also be visualized from a situation wherein if a person 'X' engaged in construction business has purchased a Honda City Car in the name of his firm and withdraws Rs. 50 lakh from his Bank Account for disbursing salaries to his employees. He carries money from Bank to his office. Would he be eligible for input tax credit in respect of the Honda City Car as he is transporting money in the course of his business? If this had been the case then in case of motor vehicles section 17(5) of the GST Act would not have restricted the eligibility of input tax credit in case of motor vehicles to just the four persons/entities and thus, the exclusion of money from the definition of 'goods' under the GST Act is with very specific intent by the Legislature. In this situation we need to have a relook at the wordings of Section 17(5) (a) of CGST Act which is as under :-

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

*(a) motor vehicles and other conveyances except when they are used—*

*(i) for making the following taxable supplies, namely:—*

*(A) further supply of such vehicles or conveyances ; or*

*(B) transportation of passengers; or*



(C) imparting training on driving, flying, navigating such vehicles or conveyances;  
(ii) for transportation of goods;

We see that legislative intent to allow input tax credit in respect of vehicles is very restrictive and requires to be interpreted accordingly and credit in respect of motor vehicles shall not be available except to the four persons/entities as enumerated above when there is specific exclusion of 'money' from being considered as goods in GST Act and provisions. The judgement of the Hon'ble Supreme Court in the case of Printers (Mysure) Ltd Vs Asst. Commercial Tax Officer (cited supra) as referred by the applicant is in respect of very different statute i.e. the Central Sales Tax Act, 1956 wherein the issue was whether purchase and use of newsprint in Manufacture of Newspaper can be treated as not being used in manufacture of 'goods' as newspapers were kept out of definition of 'goods' under the Central Sales Tax Act. The definition of 'goods' under Central Sales Tax Act which was under consideration in the aforesaid judgment is reproduced as under -

*"goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities."*

Thus the issue before the Hon'ble Supreme Court was whether newspaper manufactured from newsprint would be 'goods' or not as a new product 'newspaper' was manufactured. Thus there is no denying that newspapers are goods but were excluded from 'goods' under the Central Sales Tax only with a view to ensure that there is no Sales Tax liability on sale of newspapers. Thus, the context in the case law as referred is totally different and there was no intent to not to treat newspapers as 'goods' but the only intent was to put them out of Sales Tax liability and Hon'ble Supreme Court has rightly interpreted as per intent and context of the Central Sales Tax statute.

However when we see definition of 'goods' as given in the GST Act, we see that the definition of 'goods' is as under -

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

We see that it specifically gives the exception that under the GST Act, 'money' will not be considered as 'goods' for the provisions of GST and therefore, in respect of GST Act wherever the word 'goods' comes it will specifically mean that money would not be covered in the same. The intent of legislature is further confirmed from the exclusion given in respect of e-way bill provisions as claimed by the applicant in his favour in respect of eligibility of input tax credit wherein it is clearly given that no e-way bill is required to be generated in respect of transport of currency which is as under-

Sr. No.	Description of Goods
(1)	(2)
	....
6	Currency
	....





Thus, we see that money is 'goods' as per general understating but for the provisions under the GST Act it is specifically excluded from treating them as 'goods' and if that had not been the intention then the transport of currency would not have been excluded from the provisions as applicable in respect of transport of all other goods as per the procedure prescribed through the mechanism of e-way bills as as per general understanding money is also 'goods'.

Thus the e-way bill provisions exclusively and clearly confirm and reaffirm that 'money' will not be treated as goods in the provisions under section 17(5)(a) (ii) of the GST Act which is reproduced as under -

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

*(a) motor vehicles and other conveyances except when they are used—*

*(i) for making the following taxable supplies, namely:—*

*(A) further supply of such vehicles or conveyances ; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving, flying, navigating such vehicles or conveyances;*

*(ii) for transportation of goods;*

And therefore, transportation of money is not covered in section 17(5)(a) (ii) of the GST Act and the applicant is not eligible for availing input tax credit in respect of motor vehicles used in transport of money.

06. In view of the detailed deliberations held hereinabove, it is ordered thus -

### 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-08/2017/B-

11

Mumbai, dt.

19/3/2018

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

Question 1 Whether supply of such motor vehicles as scrap after its usage can be treated as 'supply' in the course or furtherance of business and whether such transaction would attract GST? If yes, please provide the rate of GST and/or Compensation Cess.

Answer 1 The question is answered in the affirmative. As regards rate of GST and/or Compensation Cess, the details being inadequate, the applicant may refer to the Notification No.1/2017-Central/State Tax (Rate) and Notification No.1/2017-Compensation Cess (Rate), as amended from time to time.



Question 2 If the answer to Question 1 is in affirmative, whether Input tax Credit is available to CMS Info Systems Ltd. ('CMS' or 'the applicant') on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business and supplied post usage as scrap?

Answer 2 [A] Per Sh. Borhade, Member

The question is answered in the affirmative. The input tax credit available would be subject to the provisions of the Central / State Goods and Service Tax Rules, 2017 made in this regard.

[B] Per Sh. Pankaj Kumar, Member

The question is answered in the negative. The input tax credit on purchase of motor vehicles i.e. cash carry vans would not be available.

As the Members of the Advance Ruling Authority differ in respect of Question no.2 as raised by the applicant, appropriate reference is made to the Appellate Authority for Advance Ruling for hearing and decision on this question.




  
B. V. BORHADE  
(MEMBER)

  
PANKAJ KUMAR  
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
3. The Jurisdictional Commissioner of Central Tax

CERTIFIED TRUE COPY  
  
CHAIRMAN  
ADVANCE RULING AUTHORITY  
MAHARASHTRA STATE, MUMBAI