

Case Study Series – GST Advance Ruling

Crux of the case:

Whether part recovery of “renting of motor vehicles services/ cab services” from employees in respect of the transport facility provided to them would be treated as “supply” as per the provisions of GST and whether GST is leviable on the same?

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| Authority | Maharashtra authority for advance ruling |
| Legal Name of Applicant | M/s. Integrated decisions and systems India Pvt Ltd |
| Details of Application | GST-ARA, App No. 116 dt.25.02.2020 |

Facts of the case:

- The applicant is primarily engaged in the business of providing software development and support services.
- The applicant is providing cab services to employees as a welfare and safety measure, the applicant initially pays the entire amount and subsequently a partial amount is recovered from the respective employees.
- The applicant is of the view that GST is not applicable on the partial amount recovered from the employees.

Applicant's view:

- The applicants business is providing support services for software and not providing cab services to employees.
- As per section 7 of CGST and MGST Act, in order to constitute a supply the same should be in furtherance of business and there should be consideration. In the present case there is no furtherance of business and in fact no consideration but recovery of partial amount only, which is a reimbursement of expense.
- Thus, the transaction between employee and the company is not a supply and not liable to GST.

Department's view:

- As per section 7(1) of the Act, a transaction can be treated as supply if it satisfies the following condition,
 - “There should be involvement of two persons. It must be covered under any specified form such as sale, transfer etc. It should be made for consideration. It should be made in the course of furtherance of business.”
- In the given case, the employer acts as a service provider and the employee acts as the service receiver. Hence two persons condition is satisfied
- The above mentioned activity is in the form of sale and thus the second condition is also satisfied.
- Further, the partial amount being recovered from the employee acts as the consideration for this transaction. Hence the third condition is satisfied
- As per section 2(17) of the act providing transport facility to employees can be termed as incidental or ancillary to main business. Thus, said activity is carried out in the course of furtherance of business.
- In view of the above, it is clear that that the transaction between employee and the company falls under the ambit of supply and is therefore liable to GST.

Discussion and finding:

- The provision of transport facility to the employees is a welfare activity and is not at all connected to the functioning of the business. Further, the said activity is not a factor which will take the applicants business activity forward.
- The transport or lease/rental of vehicle service is also not the output service of the applicant since they are not in the business of providing transport service. Rather, this transport facility is provided to employees by a third part vendor and not the applicant.
- The partial amount recovered by the applicant from its employees in respect of use of such transport facility are a part of the amount paid to third party vendors which has already suffered GST. Therefore in the subject case, the applicant is not a provider but a receiver of such services.
- The authority vide order no GST-ARA-23/2019-20/B-46 dt. 25.08.2020 in an application filed by M/s. Tata Motors Limited held that GST is not applicable on such nominal amounts recovered from employees on account of providing bus transportation facility to its employees.
- Accordingly the activity of arranging transport facility for employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of software development.

Order:

1. Whether part recovery of “renting of motor vehicles services/ cab services” from employees in respect of the transport facility provided to them would be treated as “supply” as per the provisions of GST and whether GST is leviable on the same?
 - **NO**
2. If the answer to q.no. 1 is yes, then how the value of said supply will be determined keeping in mind that employee and the applicant are related party as per provisions of GST law?
 - **Not answered in view of answer to Q. No 1 above**
3. Further also if the answer to question no 1 is yes, then whether Input tax credit is admissible in respect of GST paid on inward supply of “renting of motor vehicle service” which are used for employees?
 - **Not answered in view of answer to Q. No 1 above**

Key Take away from the above decision:

Providing cab services to employees and collecting a nominal amount from them – NOT a supply because it is not in the course of furtherance of business hence NOT liable to GST.