

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)
BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE
OF UTTARAKHAND
(Goods and Services Tax)

Present:

श्री अनुराग मिश्रा (सदस्य)

Shri Anurag Mishra (Member)

श्री रामेश्वर मीणा (सदस्य)

Shri Rameshvar Meena (Member)

The 26 day of September, 2022

अग्रिम विनिर्णय संख्या. 10/2022-23

Ruling No: 10/2022-23

in

आवेदन संख्या . 06/2022-23

Application No: 06/2022-23

1	आवेदक Applicant	M/s Gurjinder Singh Sandhu, (Proprietor M/s New Jai Hind Transport Service) 1 st Floor, Shop Number 72, Avdhoot Mandal, Haridwar - 249407.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Abhishek Anand, Advocate, Sh. Rahul Kumar, Advocate Sh. Manohar, Accountant
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Sh. Deepak, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	02.07.2022
7	सुनवाई की तिथि Date of Personal Hearing	30.08.2022 (Through video Conferencing)

नोट: इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

PROCEEDINGS

This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Gurjinder Singh Sandhu (Proprietor M/s New Jai Hind Transport Service), 1st Floor, Shop Number 72, Avdhoot Mandal, Haridwar - 249407 (herein after referred to as the "applicant") and registered with GSTIN - 05EOFPS2375RIZ4 under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. In the application dated 02.07.2022, the applicant submitted that:

They are in the process of discussion for providing transport of goods service by road to a recipient which is not a related person, for which consignment note will be issued by the applicant. As per the draft agreement they will have to transport the goods from the factory of the recipient to destination specified by the recipient by deploying vehicle with driver/staff to run/operate, for exclusive transport of their goods but the fuel required to transport the goods shall not be within the scope of work of the applicant and shall be borne by the recipient of the said service. Since the fuel (diesel) is not in the scope of the applicant as per draft agreement hence while charging GST at the applicable rate, on the freight consideration charged by them from the recipient under forward charge mechanism, cost of the fuel consumed/ used for transport of the goods would not be include therein.

In view of the above facts, 'the applicant' is seeking advance ruling as to "*Whether the value of free diesel filled by service recipient under the accepted terms of contractual agreement in the fleet(s) placed by GTA service provider will subject to the charge of GST by adding this free value diesel in the value of GTA service, under the Central Goods and Services Tax Act, 2017 & Uttarakhand Goods and Service Tax Act, 2017?*"

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 provisions under the SGST Act.

4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

5.2 In the present case applicant has sought advance ruling on classification of goods or services, applicability of a notification issued under the provisions of this Act, determination of value of supply of services and determination of the liability to pay tax on any goods or services, therefore, in terms of said Section 97(2) (c) of CGST/SGST Act, 2017, the present application is hereby admitted.

6. Accordingly opportunity of personal hearing was granted to the applicant on 30.08.2022. Sh. Abhishek Anand, Advocate, Sh. Rahul Kumar, Advocate and Sh. Manohar, Accountant of the applicant firm, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Sh. Deepak, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. He presented the facts and requested the authority to decide the case on merits.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05EOFPS2375RIZ4. Before proceeding in the present case, we would first go through the submissions made by the applicant on different dates, which are as under:

8. (a) GST is a contract-based levy- GST is leviable on the transaction/ contract entered between the parties within four corners of rights & obligation created by the parties under the agreement as held by the Hon'ble Gujarat High Court in the case of Mohit Minerals Pvt. Ltd v. UOI 2020 (1) TMI 974 and hence tax can only be levied on the (i) activity agreed between the parties under the contract & (ii) undertaken by parties falling within ambit & scope of CGST Act.

(b) GST is on Supply- Section 7 (1) (a) reads that supply includes all forms of supply of goods or services or both ... for a consideration by a person in the course or furtherance of business. In present case, there would be supply of GTA services by the applicant for consideration viz. freight, to the service recipient and the only consideration flowing between the parties, agreed under the contract, is freight charges as the Fuel is not a consideration as in-seriatim agreed under the contract between the applicant & the service recipient.

GST is tax on consumption and not on business. Hence, in present case, what is being consumed by the service recipient will be only the activity carried by the Applicant i.e., GTA service & consequently freight charges. The FOC fuel, being liability of the service recipient on its own cannot be said to be a value addition brought forth by the Applicant. Hence, such free fuel cannot be made leviable to GST. Schedule I to the CGST Act expressly covers activities to be treated as supplies even if made without consideration. Applicant and the service recipient are not related but are independent to each other & the transaction shall take place on principal-to-principal basis. As such, FOC fuel is not supply and is even outside the purview of Schedule I. In the facts of present case, the FOC fuel does not constitute a "supply" as there is neither transfer of property nor there is any consideration involved. Since the fuel will be directly filled in the fuel tank of the goods carriage only for the purpose of transporting goods belonging to service recipient, the fuel cannot be construed to be given (SIC.) supplied to the applicant.

(c) Free fuel cannot be included/added to the freight consideration as the levy and collection of tax is defined in section 9 of CGST Act which provides that GST shall be levied on the value determined in section 15 of the CGST Act and transaction value shall be deemed to be the value of supply when supply is made between unrelated person and price is the sole consideration. This provision defines the transaction value as the price actually paid or payable for the said supply of goods or services or both.

The applicant shall supply GTA services to the service recipient against freight charges i.e., the only consideration flowing between the parties as agreed under the contract. Thus, under the agreement between the parties, freight charges are sole consideration & only price paid/payable for GTA Service by the applicant to the service recipient. In other words, freight charges are the transaction value or the contract price for the GTA service. Further, applicant & service recipient are not related to each other & entire transaction shall take place on principal-to-principal basis, therefore, only consideration exigible to GST shall be freight charges & nothing else.

(d) Procurement of fuel is not contractual liability of the applicant -Section 15(2)(b) of the CGST Act states that transaction value shall include any amount that the supplier is liable to pay in relation to such supply but has been incurred by the recipient and not included in the price actually paid or payable for such goods or services and in the present case, the applicant and the service recipient are unrelated persons & as such the value for levy of GST shall be the freight charges i.e., the consideration agreed under the contract between the parties for the GTA services of the applicant. The value of fuel, which is owned by and falls under the contractual liability of the service recipient, should not be added to the value of supply by the applicant for the reasons that Applicant is not liable for Fuel i.e., under the agreement between the parties, free of cost fuel is liability of service recipient only and not liability of the applicant, therefore, it cannot be said that the amount incurred by the service recipient for purchasing fuel was an amount that the applicant is liable to incur for providing GTA service. Accordingly, Section 15(2)(b) of the CGST Act, will not apply to the present matter as contractually the applicant is not liable to pay for the fuel. Contractually, Fuel is the liability of the service recipient. Thus, value

of fuel cannot be added to the assessable value for payment of GST in the hands of the applicant.

(e) Price/freight charges are sole consideration for supply by the applicant & FOC fuel is not an additional consideration (nonmonetary) for such supply. Free of cost fuel would be filled in the tank of the truck by the service recipient on account of rights & responsibilities created under the agreement between the parties.

The impact of supply of free of cost material on valuation under indirect tax laws/service taxes no longer *res-integra*. The Hon'ble Supreme Court in the case of *CST v. Bhayana Builders P Ltd* 2018(2) TMI 435 and *UOI v. Intercontinental Consultants and Technocrafts Pvt Ltd* 2018 (3) TMI 357, in the context of Service tax laws, has clearly held that value free of cost materials/goods by the service recipient to the service provider are not includable in the value of service. Ratio of these decisions apply to of the present matter as well. Reliance is also placed on the decisions in the matter *Karamjeet Singh & Co Ltd v. CCE* 2017 (9) TMI 1125-CESTAT New Delhi. This decision has been affirmed by Hon'ble Supreme Court and therefore has attained finality.

(f) Contract price cannot be rejected as it will tantamount to undermining "freedom of contract" and "sanctity of contract" between the parties.

(g) The present issue is no longer *res-integra* in as much Hon'ble AAR Karnataka in *M/S Hical Technologies Pvt. Ltd.*, 2019 (10) TMI 571 held that "2. *The value of the goods provided by WIPL would not form the part of the value of the supply and must be excluded while valuing the supply.*" Hon'ble AAAR Karnataka in *M/s Nash Industries (I) Pvt. Ltd.* - 2019 (3) TMI 435 and Hon'ble AAR Maharashtra in *M/s Lear Automotive India Private Limited* - 2018 (12) TMI 766 has also taken the above said view.

9. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed by the applicant for our consideration. Now we proceed by taking up the issue:

9.2 We find that the issue involved is of the valuation of the supply, hence for perspective Section 15 of the CGST Act, 2017 is reproduced below:

"15. Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another’s businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term —person|| also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related”.

We observe that the section provides that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

9.3 We further observe that it has been specifically mandated that the value of supply shall include (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier; and (b) **any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.**

From the above, it very clear that the Section 15 of the CGST Act, 2017 mandates that the value of supply shall include among other things, any other amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

We find that the provisions of the Section 15 above are very clear and in unambiguous terms it has been mandated that any amount that the **supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.** The use of words “**supplier is liable to pay in relation to such supply**” brings out the intent of the legislature and leaves no room for any doubt.

Emphasis supplied

9.4 Further, the term supply is defined in Section 7 of the CGST Act, 2017 and as per the provisions all forms of supply of goods or agreed to be made for a consideration is a part of supply. And the term “consideration” has been defined in Section 2(31) of the CGST Act, 2017 which mandated that consideration includes any payment whether in money or otherwise made or to be made or monetary value of any act or forbearance for the inducement of the supply of goods. The usage of the terms “or otherwise” and “or forbearance for the inducement of the supply of goods or services or both, whether by the recipient”, in the statute leaves no doubt about the spirit and essence of the Act.

In the instant case although the supplier i.e. the applicant in the **course of normal business transaction was required to include the cost of fuel, but for the wordings (read terms and conditions which apparently suites themselves) inserted in the agreement that too between two private entities, are trying to circumvent the statute, which appears was not the intent of the Parliament.**

9.5 We observe that without the fuel the vehicle does not operate (run) and without running i.e. moving from one place to another, the act of transportation of goods by road does not happen. The goods transport service has the integral component of moving of goods from one place to another and for this to undertake a vehicle in running condition, an operator etc. are required. The running condition of a vehicle cannot be achieved without the fuel, as in absence of fuel the vehicle cannot move from one place to another to transport the goods. We are of the opinion that to claim to provide the services of transporting the goods, actual transportation has to take place and without fuel this cannot happen. And if there is no transportation of goods due to absence of fuel or any other reason the same cannot be termed as "GTA service". At best the same can be termed as Rental or leasing service.

9.6 We also opine that without providing the fuel (being an integral component for performance of service) to operate and run the vehicle to transport the goods from one place to another but by merely issuing consignment notes, the service cannot be termed and classified as "GTA service", as the ingredient of transport of goods comes into play, when and only when the vehicle in running condition along with operator have been provided by the service provider. The running condition implies that all the upkeep, maintenance, operation including that of fuel is the liability of the service provider. We also find that the "Price/freight charges" as referred to by the applicant are insufficient for supply of "GTA Services" as claimed by them. Further the contention of the applicant that Contract price cannot be rejected as it will tantamount to undermining "freedom of contract" and "sanctity of contract" between the parties holds no ground as it is not sacrosanct being against the essence and spirit of the GST enacted by the Parliament.

Hence we observe that for "GTA service" to come into play, the transportation of goods has had to be undertaken by the applicant only and hence the amount on account of the price of fuel that the supplier was liable to pay in normal course of business operation and in relation to such supply, which has been drafted to be incurred by the recipient of the supply (as per the agreement supra) and not included in the price actually paid for the goods or services or both, is includible in the value of a supply of services to arrive at the transaction value.

9.7 Further we find that reliance of other decisions and that of M/s Bhayana Builders Pvt. Ltd., have been made, however, we observe that Hon'ble Supreme Court in the case of M/s ABL Infrastructure Pvt. Ltd., v. CCE in civil appeal No. 41950/2018 vide order dated 03.12.2018 dismissed the appeal of M/s ABL Infrastructure Pvt. Ltd., against Order dated 28.09.2017 in appeal No. 89736/2013 passed by the Hon'ble CESTAT, Mumbai [2018 (19) G.S.T.L. J161 (S.C.)]. The CESTAT in the Order dated 28.09.2017 has issued order in favour of the Service Tax Department for inclusion of value of free goods and material into the "gross amount charged".

9.8 Therefore, we observe the input i.e. fuel, to run and operate the vehicle, provided free of cost by the recipient of the service, for transportation of goods, shall form part of

value of supply in view of Section 15 of the CGST Act, 2017, as the cost of this input has to be paid by supplier of services but incurred by the recipient (as per the terms and condition of the agreement) as for the purpose of levy of GST, cost of all the inputs, whether provided free of cost or not, has to be included in the value of supply. We find that this authority has taken the same view in the ruling dated 31.05.2021 in case of M/s Vinayak Air Products Pvt. Ltd., BHEL CFFP, Ranipur Haridwar, Uttarakhand.

9.9 Further, we find that the applicant has contended that transaction is revenue neutral in nature, but we observe that this argument devoid of any merit as the dues to the Government are payable as per the provisions of the Act and cannot be set off. We also find that it has been contended that there is impossibility of compliance at the end of the applicant; we observe that in the CGST Act, 2017 there is no such provision. Moreover, cost price/procurement price of the fuel i.e. diesel in the instant case is open to all in the market and even the business houses, industries etc. consuming diesel for any of the reason, book the expenses incurred by them as per the norms of the industry.

9.10 In view of the above facts and discussion held above we hold that the value of free diesel filled by service recipient will be subjected to the charge of GST by adding the free value diesel in the value of GTA service, under the Central Goods and Services Tax Act, 2017 & Uttarakhand Goods and Service Tax Act, 2017.

10. In view of the discussions held above, we rule as under:

RULING

The value of free diesel filled by the service recipient in the vehicle(s) provided by the applicant will subject to the charge of GST by adding the free value of diesel to arrive at the transaction value of GTA service.


ANURAG MISHRA
(MEMBER)


RAMESHVAR MEENA
(MEMBER)

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F. No.: 6/S.Tax-UKD/GST/Sec-97/2022-23/DDN/ 3924 Date: 26.09.2022

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-II, CGST, Haridwar for information and necessary action.
5. The Assistant Commissioner, Sec-4, SGST, Haridwar for information and necessary action.
6. The Concerned officer, CGST, Dehradun Commissionerate, Uttarakhand.
7. The Concerned officer, SGST, Commissionerate, Uttarakhand.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.