

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such Appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Ishan Resins & Paints Limited
Address (correspondence)	Gate No 1, Jalan Industrial Complex, Baniara, Begri, Howrah-711411
GSTIN	19AAAC15587K1Z0
Case Number	46 of 2019
ARN	AD 1911190001310
Date of application	November 08, 2019
Order number and date	40 of WBAAR/2019-20 dated 17/01/2020
Applicant's representative heard	Sri Narayan Kumar Agarwal, FCA Ms Nikita Sultania, CA

1. Admissibility of the Application

1.1 The Applicant intends to lease trucks or tankers without operator to goods transport agencies (hereinafter called "GTA") or any other persons. The Applicant seeks a ruling whether supply of services by way of leasing of goods transport vehicles without operators to GTA would be exempt under serial no. 22 (b) of Notification no 12/2017 CT(Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time (hereinafter collectively called 'Exemption Notification'). It also wants to know, if not exempted what will be the appropriate classification and rate of tax in GST Act, 2017. Further, the applicant seeks clarification on whether the credit of input tax paid on purchasing of motor vehicles is admissible or not.

1.2 These questions are admissible under section 97(2)(a)(b)&(d) of the GST Act. The concerned officer from revenue submits that questions raised in the application are not

pending or decided in any proceedings of the GST Act. As such, he does not object to the admissibility of the application. The applications, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant provides a proforma agreement. According to the agreement the Applicant will lease out the vehicle entailing the transfer of the right to use. The lessee will enjoy possession of the vehicle and provide the operator, bear the cost of fuel, maintenance, insurance etc.

2.2 SI No. 22 of the Exemption Notification exempts the service by way of giving on hire a means of transportation of goods to a goods transport agency. The Applicant, however, argues that leasing out a vehicle without operator where the control and possession is transferred to the lessee is different from giving the vehicle on hire. In support of its argument the Applicant refers to the judgment of Uttarakhand High Court in Commissioner of Customs & Central Excise vs Sachin Malhotra [2015 (37) STR 684 (Uttarakhand)].

2.3 In Sachin Malhotra (supra) the court has examined whether there is any distinction between a simple contract of hiring and renting of a cab. The court has held that although both rent and hire may, in a different context, have the same connotation, they signify two different classes of transactions in the context of imposing service tax under section 65(105)(o) of the Finance Act, 1994, as amended. In renting of a cab scheme, as defined under section 75 of the Motor Vehicles Act, 1988, the possession and control of the vehicle is transferred to the hirer. Therefore, unless such transfer of the right to use happens a contract of hiring a vehicle does not qualify as renting of a cab under rent-a-cab scheme.

2.4 Applying this analogy the Applicant argues that hiring in SI No. 22 of the Exemption Notification does not include renting or leasing of vehicles when possession and control of the vehicle are passed on to the hirer. As the Applicant intends to transfer the possession and control to the lessee, SI No. 22 of the Exemption Notification will not, therefore, apply to its transactions.

2.5 Rental service of transport vehicles with operator is taxable under SI No. 10 of Notification No. 11/2017 – CT (Rate) dated 28/06/2017 (corresponding State No. 1135-FT dated 28/06/2017), as amended (hereinafter collectively called the Rate Notification). But it does not apply to the Applicant's case, as the Applicant intends to lease out the vehicles without operator.

2.6 The Applicant submits that its service of leasing the vehicles without operator can be taxed under the appropriate heading under SI No. 17 of the Rate Notification.

3. Submission of the Revenue

3.1 The concerned officer has refrained from making any comments in this regard.

4. Observations & Findings of the Authority

4.1 In Black's Law Dictionary hiring is discussed as a kind of bailment, which is classifiable into five categories. One of them is 'locatum' or hiring. It is further subdivided into 'locatio rei' where the hirer gains temporary possession of the thing. Hiring, therefore, includes

agreements where the control and possession of the goods are transferred to the hirer. It is known as the transfer of the right to use the goods. SI No. 22 of the Exemption Notification should, therefore, apply to all hiring of the means of transportation of goods, provided the hirer is a goods transport agency and no other specific provision is made for taxing the transfer of the right to use such goods.

4.2 A specific provision, however, is made under SI No. 17(iii) of the Rate Notification. The service of transferring the right to use any goods for any purpose (whether or not for a specified period) is taxable under the said provision at the same rate as may apply to supply of the goods. Such a provision restricts the meaning of the term 'hire' in SI No. 22 of the Exemption Notification only to those transactions that do not involve transfer of the right to use the goods. Sachin Malhotra (supra) is relevant so far as it shows that the meaning attributable to an act of hiring is dependent upon the context in which the term is applied.

4.3 The Applicant intends to lease out vehicles like trucks, tankers etc. that are designed to transport goods. The control and possession of the vehicle will be transferred to the lessee, who will engage operator and bear the cost of repair, insurance etc. It is, therefore, not classifiable under SAC 9966, which is restricted to rental services of transport vehicles with operator.

4.4 The service is classifiable under SAC 997311 as leasing or rental services concerning transport equipment without operator. It amounts to the transfer of the right to use the goods and taxable under SI No. 17(iii) of the Rate Notification.

4.5 Section 17(5)(a) of the GST Act does not allow input tax credit on inward supply of motor vehicles of a specific category (those meant for transportation of persons having seating capacity not exceeding thirteen persons). The restriction, therefore, does not apply to the goods transport vehicles. SI No. 17(iii) of the Rate Notification does not prohibit claiming input tax credit on the goods given on lease.

In light of the above discussion, we rule as under

RULING

The Applicant's service of leasing goods transport vehicles is classifiable under SAC 997311 and taxable under SI No. 17(iii) of Notification No. 11/2017 – CT (Rate) dated 28/06/2017 (corresponding State No. 1135-FT dated 28/06/2017), as amended.

The Applicant can claim input tax credit in accordance with law on the goods transport vehicles so leased out.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling



(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling