
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	KERALA  State Goods & Services Tax
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BEFORE THE AUTHORITY OF : Smt.Gayathri.P.G IRS &
 : Shri. Abdul Latheef K

Legal Name of the applicant	M/s. Indus Motor Company Pvt Ltd
GSTIN	32AAACI4904J1ZV
ARN	AD3203220033016
Address	1047/2 Indus Motor Company PVT Ltd, Floor No. 3, MG Road, Thevara Ernakulam -682015.
Advance Ruling sought for	1. Whether the services rendered by the applicant falls under the chapter 99, heading 9973 and service code 997311? 2. Whether the rate provided in notification no 11/2017 Central Tax Rate dated 28.6.2017 as amended vide notification No 20/2019 Central Tax (Rate) under the Sl no 17 (viii) is applicable for the services rendered by the Applicant and the applicable GST rate of tax is 18%?
Date of Personal Hearing	21.06.2024
Authorized Representative	Sri.Razee Moideen, FCA

ADVANCE RULING No. KER/15/2024 Dated 15/07/2024

1. Indus GO is a car rental service promoted by Indus Motor Company Pvt Ltd, and provides self-drive rental cars in Kerala. Vehicles can be booked from select spots and can be booked with or without fuel. These vehicles are rented solely for personal use and cannot be used for business purpose of transporting people or property for monetary gain or operating a taxi service.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (*herein after referred to as CGST Act*) and the Kerala State Goods and Services Tax Act, 2017 (*herein after referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference herein after to the



provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. The applicant requested advance ruling on the following:

3.1. Whether the services rendered by the applicant fall under the chapter 99, heading 9973 and service code 997311?

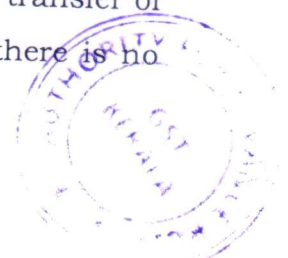
3.2. Whether the rate provided in notification no 11/2017 Central Tax Rate dated 28.6.2017 as amended vide notification No 20/2019 Central Tax (Rate) under the Sl no 17 (viii) is applicable for the services rendered by the Applicant and the applicable GST rate of tax is 18%?

4. Contentions of the Applicant:

4.1. The applicant provides the services of renting of motor vehicles. Vide notification No. 11/2017 Central Tax (Rate) for heading 9966 as it stood prior to its amendment, rate of tax for renting of motor cab with or without operators was 18%. Subsequently vide Notification No 20/2019 Central Tax (Rate) this heading was restricted to rental services of transport vehicles with operators. Prior to the amendment, the applicant billed their rental services under SAC code 996601, at 18% GST. Since the applicant provides cars without operators, presently the applicant is classifying the same service under code 997311.

4.2. The gist of the application filed by the applicant is whether the services offered by them fall under sl. No. 17 (iii) of notification 11/2017 Central Tax (Rate) dated 28-06-2017 under HSN 9973 (*transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall attract the same rate of central tax as on supply of like goods involving transfer of title in goods*), or if it would fall under sl. No. 17 (iii) of the said notification (as amended vide notification Nos 27/2018 and 20/2019) i.e., *Leasing or rental services without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above*, with a tax rate of 18%.

4.3. The applicant submits that the terms 'lease' and 'transfer of right to use' have not been defined in the GST Act. Transfer of right of goods involves transfer of possession and effective control over such goods. In the instant case there is no



transfer of possession and effective control. Prior permission of the applicant has to be obtained regarding the places where the vehicle is being used. The vehicle is under the overall control of the applicant through the track on device installed on the vehicle. Repairs required, if any, are carried out by the applicant. There is no transfer of right to use goods as the applicant is responsible to abide by all the laws relating to motor vehicles. The applicant is responsible for any damage to third parties, insurance etc. The applicant, however, reserves the right of reimbursement from the customer. Therefore, the applicant is providing leasing or rental service without operator and not leasing or rental of goods without operator.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The Jurisdictional Officer reported that there are no pending or decided proceedings against the applicant under any provisions of the CGST Act 2017.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 21.06.2024 through Virtual Mode. Sri.Razee Moideen, FCA appeared on behalf of the applicant, and filed detailed statement of facts along with the application. He requested to issue the ruling on the basis of the submissions made by them in the application and during the personal hearing.

7. Discussion and Conclusion:

7.1. We have gone through the facts of the matter, documents on record and submissions both oral and written, made by the applicant as well as the jurisdictional officer. To answer the questions raised by the applicant, it has to be determined whether the service provided by the applicant falls under SAC 9966 or 9973, and if under 9973, whether under Sl. No. 17 (iii) or 17 (viii) of Notification No 11/2017 Central Tax (Rate) dated 28-06-2017. The description and tax rate of these services are discussed below.

7.2. The service offered by the applicant is supply of vehicles without operator. After the amendment introduced vide Notification No 20/2019 Central Tax (Rate) dated 30-09-2019, the SAC 9966 includes only rental service of transport vehicle 'with operator' and thus now the said SAC is does not cover the service rendered



by the applicant, which is rental without operator. Hence, we find that the apt SAC for the service rendered is 9973.

7.3. The general heading (9973) covers leasing or rental services, with or without operator. Under sl. No. 17 (iii) of Notification No 11/2017, the services covered are "*Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.*" These services attract the same rate of central tax as on supply of like goods involving transfer of title in goods Under sl. No. 17 (viii) of the said notification, the services covered are "*Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above*", with a tax rate of 18%.

7.4. The next issue therefore is to determine whether the service falls under Sl. No. 17 (iii) or 17 (viii) of Notification No 11/2017 Central Tax (Rate) dated 28-06-2017 as amended from time to time. In other words, the issue at hand is to determine whether the service of renting of cars without operators tantamount to 'Transfer of the right to use' the cars or 'leasing or rental' of the cars. The tax rate would differ accordingly.

7.5. We find that the terms such as 'Transfer of the right to use' 'leasing' 'rental' etc. are not explained in the GST law. However, the transaction involving the "*transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;*" is verbatim reproduced from clause (29A) (d) of Article 366 of the Constitution of India. The said clause of the Constitution has been extensively deliberated upon by the higher courts of this country, and the law on distinguishing a contract between sale of goods and supply of services is more or less settled.

7.6. This legal distinction has a bearing on the present matter, because, if the transaction falls within the purview of transfer of right to use goods, it follows that it is akin to a sale, attracting the same right as that of goods (under Sl. No. 17 (iii) of the notification). However, if there is no transaction involving transfer of goods, it falls under sl. No. 17 (viii) of the notification.



7.7. In one of the landmark rulings on the matter in *BSNL v. Union of India* [(2006) 3 SCC-1], the Apex court laid down the following five essential conditions required to constitute the transfer of the right to use the goods:

- a) There must be goods available for delivery.
- b) There must be a consensus *ad idem* as to the identity of the goods;
- c) The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permissions or licences required therefor should be available to the transferee;
- d) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor - this is the necessary concomitant of the plain language of the statute viz. a “transfer of the right to use” and not merely a licence to use the goods;
- e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

7.8. Relying on the above guidelines, in the recent judgment of *K.P. Mozika v. ONGC Ltd etc.* [2024] 1 S.C.R. 488, the Supreme Court dwelled on a similar question as to whether hiring of motor vehicles give rise to transfer of right to use any goods and amount to sale under Art. 366 (29A) (d). At para 33, the Court observed as follows:

“Thus, to decide the controversy involved in this group of appeals, the contract between the parties will have to be tested on the touchstone of the five tests laid down by Dr AR Laxmanan, J in the case of BSNL. Thus, the contract will be covered by subclause (d) of Clause 29A of Article 366, provided all the five conditions laid down are fulfilled. This Court has made a distinction between transferring the right to use and merely a license to use goods. In every case where the owner of the goods permits another person to use goods, the transaction need not be of the transfer of the right to use the goods. It can be simply a license to use the goods which may not amount to the transfer of the right to use.”

7.9. At para 42, it is observed:

“Essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract), but also the



control of the goods by the user. When the substantial control remains with the contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be of rendering service within the meaning of Section 65(105) (zzzzj) of the Finance Act after the said provision came into force.”

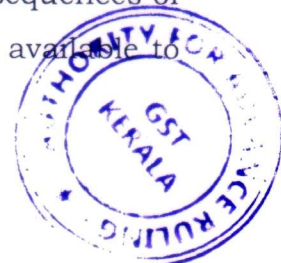
7.10. Based on the above, the Supreme Court observed that in that case the contractor retains all the responsibilities like that of repair, insurance etc of the cranes that he has lent, and therefore it is only a licence and not a transfer of right to use goods.

7.11. On the same lines, it is essential to examine the ingredients of the contract entered by the applicant with their clients to see whether only possession is transferred or whether substantial control remains with the applicant, in order to determine if the transaction before us is a licence or a transfer of right to use goods.

7.12. On a perusal of the agreement entered into with their users, we find that the cars are rented out for a period of three hours to one year. The cars are rented out based on online application and production of driving license and Adhar card. The insurance and service charges are paid by the applicant and the customer has no liabilities in this regard. There is 24 hours road assistance and replacement vehicles are provided at the request of the customer. For all practical purpose, the car is owned by the applicant and the driver has no liabilities other than payment of the required fee depending on the time of usage. Even while the car is in the possession of the customer, it is under full monitoring and control of the applicant. Only the physical possession of the car is handed over to the customers and no rights over the car are transferred.

7.13. Based on the above details in the agreement, applying the five tests laid down in the BSNL case, we find that in the case of the applicant,

- a) The cars are available for delivery.
- b) There is consensus ad idem as to the identity of the goods
- c) Though the user has a legal right to use the goods, all legal consequences of such use including any permission or licences required are not available to



them. The user does not own the RC of the car in question, even temporarily, and the insurance and other formalities are with the transferor only.

- d) For the period during which the transferee has such legal right, we find that it is not to the exclusion to the transferor. The transferee can use the car only as stipulated by the transferor and cannot put it to any other use including commercial use.
- e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others. We find that since the item involved is a car which cannot be put to use by more than one person at a time, the same right cannot be allowed to two persons at a time.

7.14. In light of above discussions, we are of the opinion that, the five tests laid down in BSNL case *supra* are not satisfied in the present case. Transfer of right of goods requires transfer of effective control over such goods, which is not present in this case. Prior permission of the applicant has to be obtained regarding the places where the vehicle is being used. The vehicle remains under the overall control of the applicant. Repairs required, if any, are carried out by the applicant. The applicant remains the one responsible to abide by all the laws relating to motor vehicles, including damage to third parties, insurance etc. Thus, it emerges that substantial control remains with the contractor and is not handed over to the user, and therefore it cannot be said to be a transfer of the right to use the vehicle.

7.15. Thus we are of the opinion that the contracts in question do not tantamount to transfer of right to use. Accordingly, we find that the service is leasing or rental services, without operator, which falls under Sl. No. 17 (viii) of Notification No 11/2017 Central Tax (Rate) dated 28-06-2017. Such services attract GST at the rate of 18% (9% CGST and 9% SGST).

8. In view of the observations stated above, the following ruling is issued:

RULING

Question-1: Whether the services rendered by the applicant falls under the chapter 99, heading 9973 and service code 997311.?



Ruling : Yes. Services rendered by the applicant falls under the chapter 99, heading 9973 and service code 997311

Question-2: Whether the rate provided in notification no 11/2017 Central Tax Rate dated 28.6.2017 as amended vide notification No 20/2019 Central Tax (Rate) under the Sl no 17 (viii) is applicable for the services rendered by the Applicant and the applicable GST rate of tax is 18%.?

Ruling : Yes. The rate provided in notification no 11/2017 Central Tax Rate dated 28.6.2017 as amended vide notification No 20/2019 Central Tax (Rate) under the Sl no 17 (viii) is applicable for the services rendered by the Applicant and the applicable GST rate of tax is 18%.


Gayathri.P.G IRS

**Joint Commissioner of Central Tax
Member**


Abdul Latheef K

**Joint Commissioner of State Tax
Member**

To,

M/s. Indus Motor Company Pvt Ltd
1047/2 Indus Motors Company PVT Ltd, Floor No. 3,
MG Road, Thevara Ernakulam -682015.

Copy submitted to:

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: cccochin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.

Copy to:

1. The Joint Commissioner, TPS, HQ, Thiruvananthapuram.
2. The Deputy Commissioner, ITMD, Thiruvananthapuram, for uploading the order in the website of the department.
3. The State Tax Officer, Tax Payer Services Circle, Ernakulam.
4. Central Tax, Ernakulam Range, Ernakulam Division.

