

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, (Member)
(2) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id	27AAACC7258B1ZW
Legal Name of Applicant	Cummins India Limited
Registered Address/Address provided while obtaining user id	Cummins India Office Campus, Tower A, 5th floor, Survey No. 21, Balewadi, Pune - 411045
Details of application	GST-ARA, Application No. 65 Dated 10.08.2018
Concerned officer	Range I, Div-V (Khadakwasla), Pune II Commissionerate,
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service provision
B Description (in brief)	The Applicant is inter alia engaged in the business of manufacturing diesel and natural gas engines
Issue/s on which advance ruling required	i) classification of goods and/or services or both (v) determination of the liability to pay tax on any goods or services or both
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 Cummins India Limited, the applicant, seeking an advance ruling in respect of the following issue.

"Determination of GST liability by deciding principal supply of the composite supply qua maintenance contracts executed between the customer and the Applicant".

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 THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. This Application is being preferred by Cummins India Limited, Maharashtra ("Applicant/ Company'), a company incorporated in India under the provisions of the Companies Act, 1956 having its registered office at Cummins India Office Campus, Survey No. 21, 5th Floor, Tower A, Balewadi, Pune-411045.
2. The Applicant is engaged in providing goods and services which qualify as 'supply' as per provisions of the Central Goods and Service Tax Act, 2017 ("CGST Act") and is duly registered thereunder bearing GSTIN 27AAACC7258B1zW,



3. The Applicant is inter alia engaged in the business of manufacturing diesel and natural gas engines and this business can broadly be bifurcated as follows:
 - Engine business - It manufactures engines of 60 HP which is generally used in automobile industry
 - Power Systems business - This unit manufactures high horsepower engines of 700 HP to 4500 HP which are used in marine, railways and defense.
 - Distribution business - It provides after sales services to its customers which includes supply of spare parts, maintenance services, rebuilding of engines and batteries.
4. The Applicant executes an Annual Maintenance Contract ("AMC") with end customers to provide maintenance services to their customers which aid in keeping customer's engines in a good working condition. These services are provided for a fixed charge based on the nature of maintenance activity that may be required, which could be one or more of the activities enlisted but limited to below:
 - To carry out preventive maintenance;
 - Routine maintenance
 - To check safety controls;
 - General inspection of parts;
 - Supply of consumables;
 - Other repairs and replacements.
5. As per terms of the AMC agreement between the customer and the Applicant, the Applicant is responsible to upkeep the engines in good working condition by undertaking regular maintenance. In order to provide immediate services to the customer and to keep the minimum downtime of the engines, the Applicant has engaged dealers which inter-alia provide maintenance services to the customers on behalf of the Applicant. If in the course of providing the maintenance services, the dealer is required to utilize consumables, parts etc., it can do so at his discretion (i.e: without any prior permission of the Applicant or customer) and the value for such parts or consumables are recovered from the Applicant under AMC.
6. These goods, consumables etc. required for undertaking activities referred under AMC are made available to the customers by dealers themselves, except customers. Engaged in mining industry in which case the goods are supplied from the depots of the Company directly.
7. Given the above background and keeping in mind the fact that the transaction involves supply of services and goods, present application is being preferred before the Hon'ble Authority for Advance Ruling to decide the taxability of the underlying transaction.



STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s)

1. ISSUE FOR DETERMINATION

Determination of GST liability by deciding principal supply of the composite supply qua maintenance contracts executed between the customer and the Applicant.

OUR SUBMISSIONS

SUBJECT TRANSACTION IS A COMPOSITE SUPPLY COMPRISING OF SERVICE AS 'PRINCIPAL SUPPLY'

- 2.1. As the underlying transaction involves rendering of maintenance services along with supply of necessary parts, it is necessary to analyze the definition of 'works contract' as given in Section 2(119) of the CGST Act. Relevant extract of the same is reproduced below for ease of reference:

"(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

- 2.2. On perusal of the above definitions, it can be stated that repair and maintenance relating to any immovable property would fall under the ambit of 'works contract'. In the present facts, the Applicant is engaged in providing repair and maintenance in respect of engines which are movable in nature and hence, it would not be considered as 'works contract'. Therefore, it is necessary to analyze the definition of 'composite supply as given in Section 2(30) of the CGST Act. Relevant extract of the same is reproduced below for ease of reference:

"(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

- 2.3. On perusal of the above definition, it appears that a composite supply means and includes multiple supplies of goods or services or both which are supplied together in the ordinary course of business. Accordingly, the definition of composite supply provides for twofold condition as stated below for any supply to qualify as a composite supply: a) Supply of two or more goods or services together; and b) Such goods or services are provided together in the normal course of business.
- 2.4. In the present facts, the AMC covers in its scope the services of maintenance and supply of parts/consumables as may be required. Mere supply of parts/consumables does not fulfill the requirement of the customer unless the same is appropriately used by the professional expert. Consequently, supply of service and parts is considered as naturally bundled and intrinsically linked with each other to effectively perform the obligations as stipulated under AMC. Given the fact that both the conditions as prescribed under Section 2(30) of CGST Act have been fulfilled, the underlying transaction constitute as a 'composite supply'.
- 2.5. It is further submitted that once any 'supply' qualifies as 'composite supply' then in view of Section 8 of the CGST Act, the tax structure applicable thereto including determination of assessable value, classification, tax rate etc. needs to be determined with reference to the principal supply comprised thereunder. The term 'principal supply' is defined under Section 2(90) of the CGST Act and is reproduced below:

"(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;"

- 2.6. On scrutiny of the above referred definition, it is submitted that principal supply basically signifies the supply of goods/services that form a substantial or a predominant element of a composite supply and all other related supplies are ancillary in nature. Accordingly, in order to decide the taxability of the underlying transaction, it is important to determine the 'principal supply of the transaction i.e. dominant intention behind the contract.

It is submitted that even though the AMC covers rendition of service as well as supply of goods in its scope, the very intention of the Applicant is to provide the maintenance services (i.e. upkeep the machine) and as such supply of goods follows as a part and parcel of providing the maintenance service comprehensively. In such a case, supply of maintenance service appears to be the dominant intention of the scope of services as envisaged under AMC and thus supply of maintenance service partakes the character of a 'principal supply'.

- 2.8. At this stage, it would be relevant to refer the past judicial precedents which inter alia discuss the dominant intention of the transaction to decide the taxability of the same under erstwhile regime. Reference is made to the Supreme Court Ruling in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Purushottam Premji [(1970) 26 STC 38 (SC)] wherein some of the tests were evolved to determine taxability of the contract. Relevant extract of the judgment is reproduced below for your easy reference:

"The primary difference between a contract for work or service and a contract for sale of goods is that in the former there is in person performing work or rendering service and no property in the thing produced as a whole..... In case of a contract for sale, the thing produced as a whole had individual existence as the sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to the other party price."

- 2.9. The above judgment has laid down the primary test to determine the taxability of the transaction. It states that the contract whose main object is transfer of property in a chattel to the buyer even though some work may be required to be done under the contract, is incidental to the sale. Based



on the aforesaid analogy, the Hon'ble Courts in the following judgments have held that the contract is for work or labour even though it involves supply of material:

Hindustan Aeronautics Ltd. V. State of Karnataka (MANU/SC/0312/1983) The Appellant was engaged in the business of assembling, servicing, repairing, overhauling of aircrafts, their instruments and accessories. In this regard, the Court held that the activity undertaken by the Appellant is in the nature of service and accordingly not liable to sales tax.

M/s. Rainbow Colour Lab & Anr. Vs. The State of Madhya Pradesh & Ors (MANU/SC/0061/2000) The Appellant is engaged in taking photographs, developing and printing films. In this case, it was held that property passing on to the customer in the form of photographic paper is only incidental to the service contract. This activity cannot be subjected to sales tax.

M/s. Everest Copiers through R.A. Partner, etc. Vs. The State of Tamil Nadu [MANU/SC/0671/1996] The Appellant is engaged in the business of photocopying. It was decided that the contract between the Appellant and the customer is a contract of work or service, not a contract of sale.

- 2.10. Accordingly, in the present facts, it is submitted that there is no intention of transfer of property in goods to the customer. The engines on which maintenance activity is being carried out by the Applicant belongs to the customer itself. Further, the maintenance contract has been executed by the customer to avail the services of professionals who are expert in the field of maintenance of the engines attached to the machines such as gensets, excavators, dumpers etc. It is submitted that the intention of an annual maintenance agreement is to ensure that systems/ machines should function properly. Maintenance of the machines helps to extend the life of the machine, maximize the energy efficiency of the equipment and eliminate unexpected system failure. Such AMC's are generally executed to stop larger failures by periodic and systematic inspection and necessary overhauling of the equipment.

in this regard; we would like to refer the clauses of the contract executed between customer and the Applicant which substantiates that the purpose of the contract is that of providing services, Relevant clauses are provided below:

"Maintenance Agreement

This Comprehensive Annual Maintenance Contract for DG sets (installed at various locations Of. HDFC Bank Limited - Pan India as per Annexure I) is made on this 1st day of April 2017 at Pune by and between:

1.(b) Penalty

Further, CUMMINS has expressly agreed that it shall employ its best efforts and provides all necessary resources to perform its services and maintain an uptime of 92% per annum of the DG sets installed at the bank's premises. CUMMINS shall discuss and review the progress and status of the current/and all assignments, on a regular basis as agreed and in addition as and when required with the Bank

Failing which the Bank, will decide for location/DG set specific (as the case may be) penalty to be levied @ 10% of AMC amount payable/paid under. Annual Maintenance Contract in respect of assets installed at such location locations, per instance of delayed TAT's for the SLA as agreed in Annexure il attached herewith.

Part-II : Obligations of Cummins

- a. To ensure that uptime of equipment will be to an extent of 92% per annum
- b. CAMC scope is revised with inclusion of out of jobs like all minor and major repairs providing rental DG sets during down time, Battery etc will be part of CAMC scope.

C. Requesting services

1. Four preventive maintenance visits per annum - Mandatory Quarterly PM visit
2. Maintenance of DG Set will be carried out as per manufacturer's standörd practice.

..... For C and D check only filters and lube oil shall be provided by Cummins.

All other parts and repairs shall be charged at actual.



3. To supply all maintenance consumables covered under this contract
4. To carry out periodic maintenance and trouble shooting in Engine and alternator
5.*

2.12. On perusal of the above, it can be stated that the purpose behind executing the contract is to keep the engines unimpaired and operative at all times. The same can be substantiated by the following:

- Primary obligation of the Applicant is to ensure that equipment is in working condition at least for minimum specified period;
- In case of major repairs or downtime of the DG sets, the Applicant is required to provide DG set on rental basis to the customer so that there would not be any disturbance to the customer's operations;
- The Applicant is liable to pay penalty to the customers in case they are not able to up-keep the machine for minimum period of time as prescribed in the agreement;
- Supply of consumables and small parts such as filters, hoses, gaskets are covered in the contract;
- Replacement or supply of major parts of the machine are specifically excluded from the scope of contract.
- Fixed price has been decided for the AMC.

2.13. It is settled position: that intention of the contract is required to be understood in terms of the clauses of the agreement. Considering the factual position narrated in Para 2.12 above, it is also submitted that the dominant intention of the activity would be considered as service where skill is important rather than supply of goods. The same can be corroborated by the following facts:

- Mere availability of parts/components, in absence of an engineer competent to use this, neither suffices the customer's requirement nor discharges Applicant from its obligation under AMC;
- Applicant's obligation under AMC had been at numerous times suitably discharged by merely applying intellect, efforts and monitoring, without necessitating any part/component

2.14. In light of the above, it is submitted that the main object of the contract is to supply services and making available of parts/components is ancillary to the same. Consequently, the principal supply of the transaction is 'service' and GST implications shall be determined accordingly.

2.15. As the principal supply of the transaction is service; place of supply would be determined in terms of the default Section 12(2) of the Integrated Goods and Services Tax Act ("IGST Act") which states that the location of the recipient would be the place of supply. Relevant portion of the Section is reproduced below:

(2) The place of supply of services, except the services specified in sub-sections (3) to (14),

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be,

(i) the location of the recipient where the address on record exists, and (ii) the location of the supplier of services in other cases."

2.16. Further, the location of the supplier of service would be determined as per the definition provided under Section 2(15) of the IGST Act which is as under:

"location of the supplier of services means, – .

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and



(d) in absence of such places, the location of the usual place of residence of the supplier"

- 2.17. In view of the above definition, registered premises from where supply is made is considered as location of the service provider. Accordingly, in the present facts, maintenance services are provided by the Applicant from Maharashtra. This is also supported by the fact that contract is executed with the Applicant. Thus, the location of the supplier of service is Maharashtra.
- 2.18. Consequently, where the customers are located outside Maharashtra, the Applicant is charging IGST. On the other hand, where the customers are located in Maharashtra, the Applicant is charging CGST and SGST.

IT IS SETTLED POSITION THAT 'SERVICE' FORMS PRINCIPAL SUPPLY OF AMC TRANSACTION

- 2.19. We would like to refer to the Advance Ruling pronounced by the Uttar Pradesh Advance Ruling Authorities on identical issue on May 16, 2018 wherein it has been held that AM transactions is composite supply and service forms a principal supply thereunder: Relevant portion of the Ruling is reproduced below for your easy reference:

"a) Whether supply of comprehensive annual maintenance service which may also involve incidental supply of spare parts/ goods should be classified as a composite supply or mixed supply? Ans. - Since the supply of maintenance service is for a one and fixed price with or without supply of spare parts/goods and supply of service and goods is made in conjunction with each other in the ordinary course as per maintenance contracts, this maintenance service to the extent of presence of all the necessary ingredients cited in the legal provisions quoted supra, is naturally, bundled with the incidental supply of goods., it is case of composite supply of service. b) In case the said contract is considered as composite supply, what is the principal supply between goods or services? Ans. - The said contract merits to be considered to be a composite supply of service, and principal supply is service inasmuch as the supply of goods is merely incidental to the maintenance contract in the given facts and circumstances."

- 2.20. On a bare perusal, it is submitted that the Ruling referred above relates to identical issue of determination of principal supply involved in a composite supply. It is submitted that even though Ruling passed by an Authority is not binding on any other proceedings sub-judice before Authority for Advance Ruling, existence of identical issue brings substantial pervasive force to the referred Ruling in the present facts. Therefore, based on the logical analogy explained under referred Ruling, Applicant submits that 'service forms principal supply of AMC.

3. PRAYER

In view of the submissions, it is most humbly prayed that Hon'ble authorities may kindly pass a ruling to clarify that AMC's are in the nature of 'composite supply' of which service forms principal supply.

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

BRIEF FACTS OF THE CASE

Applications made by M/s Cummins India Ltd. (hereinafter referred as "the applicant") vide their letters dated 26.07.2018 are examined and it is noticed that the applicant have made two applications seeking advance ruling on three issues. Comments on their application are as under:

I. Determination of Principal Supply

The applicant stated that they are engaged in the business of manufacturing diesel and natural gas engines and also engaged in distribution business which provides after sales services to its customers which includes supply of spare parts, maintenance services, rebuilding of engines and batteries. As per their submissions, they execute an Annual Maintenance Contract (AMC) with end customers to provide maintenance services to keep customer's engines in a good working condition. The AMC primarily include carrying out routine maintenance, preventive maintenance, inspection of parts, supply of consumables and other repairs and replacements.

The applicant submitted that the AMC undertaken by them falls under 'composite supply' as it consists of two or more taxable supplies of goods or services or both and hence, the applicable tax structure is to be determined with reference to the principal supply comprised there under. As per the definition of 'principal supply' defined under Section 2(90) of the CGST Act, 2017 means the supply of goods or services



which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Hence, as defined, the predominant element of a composite supply can be determined on the basis of conditions of the supply agreements (in this case Annual Maintenance Contract). The applicant has been requested to submit a copy of the AMC for examination of the case. The applicant submitted copy of Maintenance Agreement between HDFC Bank Limited and them wherein the obligations of the applicant is to ensure the uptime of equipment to an extent of 92 percent per annum and will provide services like four preventive visits per annum, maintenance of DGE SET as per manufacturer standard practices wherein all other parts and repairs shall be charged at actual. They also carry out supply of all maintenance consumables, periodic maintenance and troubleshooting in engines and alternators. Also, in their application, at para 2.11 the applicant submitted text of a portion of the AMC agreement which explains the obligations of Cummins under the maintenance agreement which is reproduced as under:

Part-II: Obligations of Cummins

- a. To ensure that uptime of equipment will be to an extent of 92% per annum.
- b. CAMC scope is revised with inclusion of out of jobs like all minor and major repairs providing rental DG sets during down time, Battery etc. will be part of CAMC scope
- c. Requesting services
 - Four preventive maintenance visits per annum-Mandatory Quarterly PM visit
 - Maintenance of DG set will be carried out as per manufacturer's standard practice.....For C and D check only filters and lube oil shall be provided by Cummins. All other parts and repairs shall be charged at actual.
 - To supply all maintenance consumables covered under this contract.
 - To carry out periodic maintenance and trouble shooting in Engine and alternator

Further, as per the submissions made by the applicant in their application at Para 2.12 that the purpose behind executing the contract is to keep the engines unimpaired and operative at all times. The same can be substantiated by the following:



Primary obligation of the applicant is to ensure that equipment is in working condition at least for minimum specified period;

In case of major repairs or downtime of the DG sets, the Applicant is required to provide DG set on rental basis to the customer so that there would not be any disturbance to the customer's operations;

- III. The applicant is liable to pay penalty to the customers in case they are not able to up-keep the machine for minimum period of time as prescribed in the agreement;
- IV. Supply of consumables and small parts such as filets, hoses, gaskets are covered in the contract;
- V. Replacement or supply of major parts of the machine are specifically excluded from the scope of contract.
- VI. Fixed price has been decided for the AMC.

In view of the above and the fact mentioned in the copy of the Maintenance agreement submitted to this office, it appears that the predominant element of supply under AMC is supply of service.

04. HEARING

The case was scheduled for 11.09.2018 for Preliminary hearing when Sh. Rohit Jain, Advocate along with Sh. Narender Vaidya, DGM Taxation appeared and made oral contentions for admission of application as per contentions in their ARA application. Jurisdictional Officer Sh. B. K. Mishra, Supt., Pune II, CGST Commissionerate appeared and stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 27.11.2018, Sh. Rohit Jain, Advocate along with Deepak L Bahirwani, Tax Director-Cummins India Group, Group CFO's Officer and Sh. Vivek Baj, C.A. ELP appeared and made oral contentions as per details submitted by them. No one from the side of the department was present.

05. **OBSERVATIONS**

We have gone through the facts of the case. The issue put before us is in respect of the agreement entered into, by the applicant with their clients, the salient features of which have been enumerated above by both, the applicant as well as the jurisdictional officer.

The Applicant has submitted that they are engaged in the business of manufacturing diesel and natural gas engines which is supplied to their end customers. They also provide after sales services to their customers on account of engines supplied by them and also by various other parties, which includes supply of spare parts, maintenance services, rebuilding of engines and batteries.

The applicant has submitted two agreements entered into with M/s HDFC bank and M/s Yes Bank. They have also submitted a correspondence received from M/s BEML Limited for "Work Order to execute the Guaranteed spares and availability contracts for 18Nos. QSK 19C Engines fitted on BH160M Dumpers a/c CCI". We find that the applicant executes an Annual Maintenance Contract ("AMC") with end customers to provide maintenance services, which helps in keeping customer's engines in a good working condition. These services are provided for a fixed charge based on the nature of maintenance activity that may be required, which includes carrying out preventive maintenance, routine maintenance, general inspection of parts, supply of consumables, etc. As per terms of the AMC agreement between the customer and the Applicant, the Applicant is responsible to upkeep the engines in good working condition by undertaking regular maintenance. In order to provide immediate services to the customer and to keep the minimum downtime of the engines, the Applicant has engaged dealers who provide maintenance services to the customers on their behalf and if required to utilize consumables, parts etc., they can do so at their discretion (i.e: without any prior permission of the Applicant or customer) and the value for such parts or consumables are recovered from the Applicant under AMC. Thus it is seen that the underlying transaction in all the agreements involve rendering of maintenance services along with supply of necessary parts, if and when necessary. Hence it is clear that the main purpose behind executing the contract is to keep the engines unimpaired and operative at all times for which a fixed price has been decided for the AMC. In order to provide immediate services to the customer and to keep the minimum downtime of the engines, the Applicant has engaged dealers who inter-alia provide maintenance services to the customers on behalf of the Applicant. Considering the factual position narrated in Para 2.12 above, it is also



submitted that the dominant intention of the activity would be considered as service where skill is important rather than supply of goods and the skill is supplied by the dealers who use competent engineers to perform the services mentioned in the contract. The goods, material, spare parts, etc. are required to be supplied only when necessary i.e. when, during the course of maintenance services it is found by the skilled personnel that there is a need for such parts which will effectively keep the runtime of the DG Sets at maximum acceptable time.

Now, to arrive at a decision, we first of all will refer to the definition of 'composite supply' which is given in Section 2(30) of the CGST Act, 2017 and is reproduced below:-

"(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

Thus it is clear that a composite supply means that there is a supply of two or more goods or services together and such goods or services are provided together in the normal course of business. In the present case, a perusal of the agreements reveal that there is definitely is a supply of two or more goods or services together and such goods or services are provided together in the normal course of business and therefore there is no doubt that there is a composite supply by the applicant in this case As both the conditions as prescribed under Section 2(30) of CGST Act have been fulfilled, the underlying transaction constitute as a 'composite supply'. The agreements also reveal that the applicant is engaged in providing repair and maintenance in respect of engines which are movable in nature and hence, it would not be considered as a "Work Contract" since works contract under the GST laws envisages immovable property wherein transfer of property in goods is involved in the execution of such contract.

Now that we find that there is a rendering of composite supply we need to find out as to what is the principal supply in this case, whether it is a supply of goods or supply of services. Therefore we refer to the definition of the term 'principal supply' which is defined under Section 2(90) of the CGST Act and is as under:-

"(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;"

In the subject case it is seen that even though the AMC covers both, supply of goods and service, the predominant intention is to provide maintenance services for the proper upkeep of the machines belonging to their clients and, supply of goods follows as a consequent to the supply of maintenance service. Hence we find that supply of maintenance service is the dominant intention of the contracts and can be considered as the 'principal supply'.



Now that we have found that the principal supply in the transaction before us is supply of service, then the place of supply is required to be determine. The place of supply would be determined in terms of the default Section 12(2) of the IGST Act which states that the location of the recipient would be the place of supply.

Further, in view of the definition provided under Section 2(15) of the IGST Act the location of the supplier of service would be the registered premises from where supply is made is considered i.e in this case the place would be Maharashtra where the applicant is registered.

To sum up, since the supply of maintenance service in the present case is for a single price with supply of spare parts/goods as and when required, the supply of both, goods and services are made in conjunction with each other in the ordinary course of business and therefore considering the provisions of the GST Laws we find that supply of services/goods in the present case is naturally bundled, with the supply of goods being incidental to the supply of services and therefore such contract are to be considered as a composite supply of service where the principal supply is service and the supply of goods is incidental to such supply of service.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

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- 65/2018-19/B- 161 Mumbai, dt. 19.12.2018

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

Question :- *Determination of GST liability by deciding principal supply of the composite supply qua maintenance contracts executed between the customer and the Applicant.*

In view of the above discussions, it is held that the principal supply in the present case between the applicant and the customer is one of supply of services.



sd
B. V. BORHADE
(MEMBER)

sd
B TIMOTHY
(MEMBER)
CERTIFIED TRUE COPY
lesh
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

- Copy to:-
1. The applicant
 2. The concerned Central / State officer
 3. The Commissioner of State Tax, Maharashtra State, Mumbai
 4. The Jurisdictional Commissioner of Central Tax. Churchgate Mumbai
 5. Joint commissioner of State tax , Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.