Brief Facts of the Case:

The present appeal has been preferred by the applicant M/s YKK India Pvt Ltd., Plot No. 699, Sector-2, Plot No. 122, Sector-6, HSIIDC, Growth Centre Bawal, District Rewari, Haryana [YKK in short] against the Advance Ruling No. HAR/HAAR/R/2017-18/04 Dated 11.07.2018 passed in their application dated 16.04.2018.

2. The applicant namely M/s YKK India Pvt. Ltd, (YKK) are engaged in the business of supply of slide fasteners, chains, sliders, etc. (Zipper or Final Product). In furtherance of its business of supply of the said final products mentioned above, YKK uses various goods and services for which the applicable tax under the CGST Act or the relevant State Act or Union Territory Acts under GST regime or Integrated Goods and Services Tax Act, 2017 are paid to the supplier, which falls within the meaning and definition of input tax defined under section 2(62) of the Act.

3. M/s YKK has its unit at Plot No. 699, Sector-2, Plot No. 122, Sector-6, HSIIDC, Growth Centre Bawal, District Rewari, Haryana, here the employees of the appellant are engaged in manufacturing the Final Products. Further, apart from the employees manufacturing final products, various managerial service employees also carry out their day to day affairs from the said factories. The said factories of the M/s YKK are situated at remote location in Haryana where public transport is very minimal which hinders transportation of employees to reach the factories.

4. In order to carry out its business of supply of its final product and for efficient functioning of its business as a whole, M/s YKK has engaged various contractual service providers who provide transportation services and ensure that employees of YKK are able to reach the factories in time for doing their day to day work as scheduled. It is for this purpose that M/s YKK enters into contracts with the said suppliers for hiring buses as well as cars. M/s YKK submitted a copy of the contract with M/s Deep Travels (Deep), as a sample contract in support of its argument. Since this contract is with specific Contractor, namely, Deep, this contract may be considered as the prototype of all contracts made with various contractors and all discussions regarding the Agreement are to be taken as relevant to and applicable for all the contracts entered into by the appellant with various contractors for provision of Transportation Services to its employees. The terms of the contract is summarized as under:

(a) The Contractor shall provide transport services to employees of the appellant from factories to Kakarwali, Rewari by way of buses.

(b) The Contractor shall deploy trained personnel viz. driver and helper buses to provide transportation services to employees of YKK from factories to Kakarwali, Rewari. The said driver and helper shall be employees of the Contractor and remain under supervision and control of the contractor.

(c) M/s YKK shall inter alia pay a monthly fee of Rs.1,48,000/- and applicable tax to the contractor for provision of Input Service.

(d) The Contractor shall provide point to point Transportation Services to employees of M/s YKK by ensuring that driver only takes routes approved by M/s YKK. Any alteration in the transportation services by M/s YKK shall requires that M/s YKK gives prior information to Contractor about the alteration.

5. In furtherance of the said contract/ agreement, the Contractor raise invoices on the appellant on the basis of usage i.e. running of the buses or cars on monthly payments for specified routes of such buses or cars, as the case may be. The invoices are raised on M/s YKK along with applicable Goods and Services Tax (GST in short) which comprises Central GST and Haryana GST by classifying the activities under HSN 996413 viz Non-scheduled local bus and coach charter services, attracting GST at the rate of 18%.

6. The question for advance ruling for consideration was:

(i) Whether the applicant (YKK) is eligible to take input tax credit on:

(a) GST charged by the Contractor for hiring of buses for transportation of employees?

(b) GST charged by the Contractor for hiring of cars for transportation of employees?

(ii) Whether the restriction on "Rent a Cab" service specified in Section 17(5)(b)(iii) is applicable to input tax credit on:

(a) GST charged by the Contractor for hiring of buses for transportation of employees?

(b) GST charged by the Contractor for hiring of cars for transportation of employees?

Comments of the concerned officer U/S 98(1) OF THE CGST/HGST ACT, 2012

7. The Deputy Excise & Taxation Commissioner (ST), Rewari, vide letter Ref.No. SPL-1/ETO (W-4), Dt. 18.06.2018, submitted the requisite comments on both the above questions raised by the applicant, as under:

The dealer is entitled to take credit of GST charged by the contractor on hiring of buses and cars to the Applicant which are used for transportation of its employees to the factories. It is submitted that the dealer is registered person engaged in the business of supply of final products which are taxable under the Act. Further, for the purpose of supply of the said final products, the dealer has employed various employees who work in various shifts at the said factories and it is for transportation of the said employees that the

Applicant has contracted with the contractors for supply of buses. Thus the dealer is eligible to take credit of GST paid to the said contractors firm whom the buses are hired for transportation of employees. However, he submitted that Section 17(5) is a non obstante clause to the enabling provisions of granting inputs tax credit specified in Section 16(1) of the Act. Thus, reading of non obstante clause in Section 17 discloses that an exception has been made to the provisions of granting of input tax credit by specifying situations where such credit shall not be available to the registered person under Section 16 of the Act. Thus, the dealer is not eligible to claim Input Tax Credit in respect of "Rent a Cab" as per provisions of Section 17(5)(b)(iii) of the Act.

Decision of Advance Ruling Authority

8. Advance Ruling under Section 98 of the CGST/ HGST Act, 2017 was pronounced as under:

8.1 The applicant is not eligible to take input tax credit on:

(a) GST charged by the Contractor for hiring of buses for transportation of employees?

(b) GST charged by the Contractor for hiring of cars for transportation of employees?

8.2 The restriction on "Rent a Cab" service specified in Section 17(5)(b)(iii) is applicable to input tax credit on:

(a) GST charged by the Contractor for hiring of buses for transportation of employees?

(b) GST charged by the Contractor for hiring of cars for transportation of employees?

Submissions made in the Appeal, by the Appellant:

9. The Appellant made the following written submissions in the Appeal:

Impugned Advance Ruling is in gross violation of principles of natural justice:

(a) The impugned ruling is based on extraneous considerations and without disclosing the contents of the comments filed by the Department to the Application of the Appellant. Therefore, the advance ruling has been passed in violation of the principles of natural justice and is liable to be set aside. The Appellant understand that the Department's comments in the present case had agreed to the submissions of the Appellant that ITC is available to the

Appellant. However, neither any reference has been made to the Department's comments nor any discussion has been made in the impugned ruling in this regard.

(b) Section 98 of the Act mandates Advance Ruling Authority to act in a fair and reasonable manner and adhere to the principle of natural justice. The Ld Advance Ruling Authority is required to provide all the material before it and relied upon it determining the fate of the application filed by the Appellant. However, in the present case, despite specifically requesting a copy of comments furnished by the Deputy Excise and Taxation Commissioner, Rewari, the same was not granted to the Appellant and the impugned ruling was passed without even referring to the said comments with a premeditated mind. Reliance has been placed on Hon'ble Bombay High Court in the case of Orkay Silk Mills Limited & Others vs M.S. Bindra & Others, 1988 (33) ELT 48 wherein it was held that:

"It is necessary to reiterate that the quasi-judicial authorities exercising powers under the Act should remember that not only justice should be done but the parties who are affected by the adverse order should have a feeling that justice has been done to them. It is not enough for any authority to assert that justice is done without there being a show of justice. The rules of natural justice are not empty formalities but must be observed to remove any feeling in the mind of the party adversely affected that his cause was not considered. The manner in which the respondent No. 1 has proceeded to pass the impugned order leaves an apprehension in the mind that the whole process was pre-determined. Such a feeling would destroy the confidence not only of the citizens but also of the Courts in quasi-judicial authorities."

(c) Advance Ruling Authority ought to have discussed or at least referred to the submissions made by the appellant and the categorical admission of the Departments representative that the input tax credit on transportation services received by the Appellant is available. During the course of hearing, the Departments representative upon considering the submissions made by the Appellant conceded to the fact that input tax credit of tax paid on transportation services is available in the present case.

(d) The Advance ruling authority being a quasi-judicial authority is expected to act in a fair and reasonable manner and without a premeditated mind. It is submitted that in the present case, the Ld. Advance Ruling Authority has relied upon extraneous material to determine the questions raised by the Appellant in its application

dated16.04.2018 before the Advance ruling Authority, however, such material was neither discussed during the course of the hearing on 10.07.2018 with the Authorized representative of the Appellant nor communicated to the Appellant before passing of the Impugned Ruling. Thus, the Appellant craves leave of the Ld. Appellate Authority of Advance ruling to rely upon complete records of personal hearing before the Ld. Advance ruling Authority and prays before the Ld. Appellate Authority of advance ruling to pass appropriate directions calling upon complete records of the personal hearing on 10.07.2018. In this regard, the Hon'ble Supreme Court in **Siemens Engineering and Manufacturing Co. of India Ltd. vs. Union of India and Anr. (1976) 2 SCC 981 and Oryx fisheries (P) Ltd. vs. Union of India; (2010) 13 SCC 427** has categorically held that quasi-judicial authorities are obligated to be independent and ought not to act in a pre-determined manner. It is further held that where notices and orders disclose premeditated mind of the adjudicating authority, such orders and notices are vitiated and ought to be quashed. The Impugned Ruling is liable to be set aside on this ground alone.

(e) The Ld. Advance Ruling Authority ought to have considered that the Appellant has fulfilled all eligibility conditions for taking input tax credit specified in Section 16 of the Act. Reliance has been placed upon the decision of the Punjab and Haryana High Court in the case of Commissioner of Central Excise vs. Maruti Suzuki India Pvt Ltd 2017 (49) STR 261 (P&H) wherein it was held that:

> ***"24.** Similarly, the Rent-a-Cab services used by the executives of the respondent for the purpose of travelling required for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet business promotion activities, vehicles launch, conferences, etc. is a an expenditure in relation to business being incurred by the respondent in order to promote the sales and for efficient running of the business for which they are entitled to avail Cenvat credit."*

Thus, the Ld. Advance Ruling Authority having failed to appreciate that the Appellant is entitled to take credit of GST charged by the Contractor on hiring of buses and cars to the Appellant which are used for transportation of its employees to the Factories under Section 16 of the CGST Act and the same is liable to be set aside.

(f) The Ld. Advance Ruling Authority ought to have considered that a bare reading of the provisions of Section 17(5) of the Act, discloses that only restriction which may be applied to a case of input tax credit relating to transportation using buses or cars etc. can be one of 'Rent a Cab' provided that the said supply of transportation services fall within the meaning of 'Rent a Cab'. The term 'Rent a cab' is not defined either in Section 17(5) or under the Act. Accordingly, reference ought to be made to the meaning ascribed to the said term under the Motor Vehicle Act, which is the specific law dealing with motor

vehicles which ply on the roads. Where specific meaning is provided under the MV Act, any other generic meaning which is not in conformity with the specialised legislation regulating motor vehicles, ought not to be resorted to. In this regard, reliance is place on the decision of **Parle Agro (P) Ltd vs. CCT, 2017 (352) ELT 113 (S.C.).**

(g) The Ld. Advance Ruling Authority failed to consider that in the present case, the Contractors are not engaged in renting of the cars or the buses to the Appellant, inasmuch as, hiring of the said cars and buses to the Appellant does not amount to 'rent-a-cab'. In terms of the Motor Vehicle Act, 1988 read with the applicable schemes to cabs, the activity of 'hiring' is different than one of 'renting and accordingly, the activity of hiring undertaken by the Contractors in the present case cannot be covered within 'rent-a-cab'. The difference between hire and rent is also recognised in legal precedents and was specifically dealt with by Hon'ble High Court of Uttarakhand in **CCE vs. Sachin Malhotra 2014-TOOL-2039-HC-UKHAND-ST.** Therefore, inasmuch as the Ld. Advance Ruling Authority erred in concluding that there is no distinction between hiring and renting, is based on perverse understanding and application of legal provisions and thus, is liable to be set aside.

(h) The Central Government under Section 75 of the MV Act clearly contemplates that renting involves giving possession and control of the motor-cab over to the renter who is desiring to drive the motor-cab himself or gets the driver to drive the motor-cab for his own use.

(i) Further, reliance is also placed upon the decisions of the Hon'ble Tribunal in **R.S. Travels vs. CCE, Meerut, 2008 (12) STR 27 and Bharat Travels Co. Ltd. vs. CST, Ahmedabad, 2010 (20) STR 646** wherein, on similar basis as adopted in the judgment of the Uttarakhand High Court in *Sachin Malhotra (supra.)*, the difference between hire and rent as stated above has been applied to hold that the activity of renting is distinct than the activity of hiring of vehicles. In case of rent, as is provided in MV Act, the renter is enabled to take vehicle in his possession and control, whereas in case of hire, the possession and control is held by the contractor. Thus, where the Ld. Advance Ruling Authority failed to appreciate the said distinction, the ruling is liable to be set aside.

(j) In the present case, a bare perusal of the sample contractsdisclose that the possession as well as control of the buses and cars remain with Contractor, who engages driver and conductor to supply transportation service to the Appellant. It is thus, clear that the Appellant merely uses the buses and cars for giving conveyance to its employees to the Factories without retaining any control or possession of the buses and cars and pays hire charges on the basis of usage i.e. payment on the basis of distance travelled or time of usage to the

Contractor. Thus the transportation services received by the Appellant are akin to hire and not rent and therefore the restriction on input tax credit in respect of 'Rent a Cab' is not applicable on supply of transportation service to the Appellant. Therefore, it is submitted that the activity undertaken by the Contractors of providing the buses and cars for transportation of the employees are not in the nature of rent but fall under the scope of hire and cannot be held to be covered by Section 17(5) of the Act.

(k) The Ld. Advance Ruling Authority failed to consider that the MV Act envisages different permits for hire a cab service and rent a cab service. In this regard, reference is made to Section 2(28) and Section74 of the MV Act, which is extracted below:

> ***Section 2(27). Contract carriage--***
> *"Contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—*
> *(a) on a time basis, whether or not with reference to any route or distance; or*
> *(b) from one point to another;—*
> *and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—*
> *i. maxi-cab: and*
> *ii. motor-cab notwithstanding that separate fares are charged for its passengers."*
>
> *Section 74. Grant of contract carriage permit.—*
> *(1) Subject to the provisions of sub-section (3), a Regional Transport Authority may, on an application made to it under section 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit: Provided that no such permit shall be granted in respect of any area not specified in the application."*

A bare perusal of Section 74 read with Section 2(27) of the MV Act discloses that in case the motor vehicle as a whole is to be used for carrying the passengers under a contract and fees for such usage is payable on time basis or point to point basis, then the permit which has to be obtained is called contract carriage permit. Further, MV Act provides for a separate license in case contractor wish to engage in rent a cab business. Accordingly, it is clear that running motor vehicles as a whole on hire basis require contract carriage permit and running specifically cabs as whole on rent basis require cab rent

permit. It is thus clear that MV Act contemplates different kind of licenses for renting and hiring and therefore it re-enforces the fact that renting and hiring are separate activities under its scheme. Hence, the Ld. Advance Ruling Authority ought to have considered that MV Act contemplates renting and hiring of motor car as separate activities and cannot be regarded as same in absence of any deeming fiction to that effect under Finance Act. Thus, the Impugned ruling is liable to be quashed inasmuch as it considers hiring and renting as synonyms.

(l) The Ld. Advance Ruling Authority ought to have considered that Section 74 deals with hiring of the motor vehicles whereas Section 75 deals with renting of motor-cabs. Thus, when motor-cab is given on hire or reward under a contract, it is covered under Section 74 whereas when motor-cab is given on rent under a contract, it is covered under Section 75 In the present case, the Contractor is not registered as rent a cab operator but is registered as contract carriage operator under MV Act and therefore, it is clear that the Contractor is not rent a cab operator for the purpose of the Act. Therefore, inasmuch as the Ld Advance Ruling authority concluded that the Contractor falls under the scope of 'Rent a Cab' service and accordingly, the exclusions specified in Section 17 (5) of the Act applies to the Appellant, the Impugned ruling is liable to be quashed.

(m) The Ld. Advance Ruling Authority has failed to distinguish between hiring of buses and cars and has held that the transportation services are provided by the Contractor to the Appellant on rental basis fall within the meaning of 'cab' and thus, the credit which relates to both hiring of buses and cabs is excluded by applying the provisions of Section 17 (5) of the Act. In this regard, it is submitted that the MV Act clearly identifies the difference between 'cabs' and 'buses, inasmuch as, both in terms of meaning given therein as well as the permits issued there under, the two categories viz. 'bus' and 'cabs' are distinct. MV Act defines motor vehicles and thereafter provides for categorisation of motor vehicles. The relevant definitions from MV Act are extracted below:

Section 2(22)
"maxi cab means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers excluding the driver, for hire or reward"

Section 2(25)
"motor cab means any motor vehicle constructed or adapted tocarry not more than 6 passengers excluding driver, for hire or reward."

Section 2(29)

"omnibus means any motor vehicle constructed or adapted to carry more than six persons excluding the driver"

A bare perusal of the definitions provided in the MV Act makes it clear that the motor vehicles are divided into different categories based on the number of passengers that the said vehicle can carry. The motor vehicle that can carry up to 6 people is categorised as motor cab, motor vehicle that can carry from 6 people to 12 people is categorised as maxi cab and motor vehicle that can carry more than 6 people is categorised as omnibus. In the present case, applying the aforesaid definition, it is clear that the buses hired by the Appellant which carry more than 12 passengers cannot be covered within the meaning of 'cabs' On a reading of the definitions in the MV Act, it is clear that the meaning of cab is understood to include only those motor vehicles which carry upto12 passengers. Thus, the restriction under Section 17 (5) which is only applicable to 'cabs' could not have been extended to include a bus with seating capacity above 12 passengers. Thus, the Impugned ruling is liable to be quashed.

(n) Perusal of Section 74 and Section 75 of the MV Act makes it clear that bus is given a license only under Section 74 whereas motor-cab can be given license under Section 75 and/or Section 74 depending on the usage. Accordingly, it is clear that bus is not given a license under Section 75 and therefore, it is submitted that bus perhaps cannot operate on rent basis. It is thus submitted that when neither Section 75 nor Rent a Cab Scheme provide for renting of the bus, Section 17(5) cannot be read to include bus for disallowance of input tax credit.

(o) It is clear that Section 17(5)(b) (iii) only contemplates inclusion of renting of cab as a input supply on which input tax credit on input tax paid under the Acts is not available. It is further submitted that there is restriction provided on renting of bus under Section 17(5)(b)(iii) and therefore, input tax paid on renting of bus under the Acts is available. Hence, it is submitted that in so far as the buses are concerned, there cannot be any doubt that transportation services provided by buses cannot be disallowed under 17(5)(b)(i) and therefore, Appellant is eligible to claim GST charged by the Contractor for hiring of buses for transportation of employees.

(p) The Ld. Advance Ruling Authority in the Impugned Ruling categorically noted that *"when it comes to goods and services tax, tax on services finds it genesis from chapter V of the Finance Act, 1994, i.e. service tax statue. Therefore, the definitions relating to rent-a-cab as occurring in the Finance Act, 1994, shall also have bearing on what is meant by rent-a-cab in common commercial parlance when it comes to understanding the same for the purpose of taxing statues".* It is submitted that given the above findings, the Ld. Advance ruling Authority ought to have also delved into the scope of rent-a-cab under

the erstwhile service tax regime. In the erstwhile service tax regime, service tax by rent-a-cab operator was only payable on renting of cabs and not on hiring of cabs. This position was also confirmed by the Hon'ble Uttarakhand High Court in the case of Sachin Malhotra (Supra) followed in **R.S. Travels vs. CCE, Meerut, 2008 (12) STR 27 and Bharat Travels Co. Ltd. vs. CST, Ahmedabad, 2010 (20) STR 646**. Therefore, inasmuch as the Ld. Advance Ruling Authority ignored the decision of the High court which is squarely applicable to the present case, without assigning any reason, the same is liable to be set aside.

(q) The Ld. Advance Ruling Authority has erroneously relied upon the decision of Gujarat High Court in the case of Commissioner of Service Tax vs. Vijay Travel, (2014) (36) STR 513 (Guj.) which has not yet attained finality as an appeal against the said order is pending before Hon'ble Supreme Court and the Supreme Court has granted leave and admitted the said appeal.

(r) The Ld. Advance Ruling Authority ought to have considered that Section 17(5) is a non obstante clause to the enabling provisions of granting input tax credit specified in Section 16(1) of the Act. The entire rationale for granting input tax credit is to avoid cascading effect of taxes on supply of goods or services or both. Thus, reading of non obstante clause in Section 17 discloses that an exception has been made to beneficial provisions of granting of input tax credit by specifying situations where such credit shall not be available to the registered person. In this regard, it is a settled principle of law that provisions which carve out an exception to a beneficial provision ought to be read strictly and unless a particular activity or goods or services specifically fall within exception, the benefit of provisions should not be denied. In this regard, it is a settled principle of law laid down in **Mangalore Chemicals and Fertilizers Ltd. vs. Deputy Commissioner, 1991 (55) E.L.T. 437 (S.C.), Union of India vs. Wood Papers Ltd. &Anr., 1990(47) ELT 500 and Union of India vs. Suksha International and Nutan Gems, 1989 (39) ELT 503 (SC),** that the exceptions to any beneficial provision have to be construed strictly and an interpretation unduly restricting the scope of a beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. Therefore, inasmuch as the Ld. Advance Ruling Authority failed to strictly construe the exception under Section 17(5), the same is liable to be set aside.

(s) The Ld. Advance Ruling Authority failed to consider the settled legal principal there are two possible interpretation of a tax provision, the one in favour of the assessee should be preferred. It is a settled principle in taxing statutes that in case there are two interpretation,

the one which casts a lesser burden on the subject must be adopted. Accordingly, it is submitted that not only the definition of 'rent' or 'cab' must not be expanded beyond what is contemplated, also that it is a settled law that in case there are two interpretation, one in favour of the assessee should be preferred. In this regard, reference can be made to **ACIT v. Hindustan Milk Foods (1975) 98 ITR 441**, wherein the Hon'ble Punjab & Haryana High Court held that:

> *Moreover, even if we are to accept Mr. Awasthy's contention we will be driven to the conclusion that at least two interpretations are possible so far as section 2(18) (b) (ii) is concerned: one canvassed by Mr. Awasthy, learned counsel for the Department, and the other by Mr. Dastur, learned counsel for the assessee. In regard to the interpretation of fiscal statutes, the rule is well-settled that where two interpretations are possible, that interpretation should be adopted which is beneficial to the assessee. In this view of the matter, we see no reason to differ from the decision of the Tribunal.*

9.1. Thus, the appellant submitted that the Ld. Advance Ruling Authority failed to take a view in accordance with the settled judicial precedents and therefore, the impugned ruling is liable to be quashed.

9.2. In view of the foregoing, appellant prayed that the impugned Advance Ruling passed by the Authority of Advance Ruling, Haryana may be set aside/modify.

Whether Appeal filed in time:

10. In terms of Section 100(2) of the Act, an appeal against Advance Ruling has to be filed within thirty (30) days from the date of communication thereof to the applicant. As seen from record, the signed copy of the impugned order dated 11.07.2018 was dispatched on 31.08.2018; and received by the appellant on 09.08.2018 as mentioned in the appeal. Appellant filed the present appeal on 05.10.2018. Accordingly, the appeal is found to be filed within prescribed time.

Record of Personal Hearing.

11. The personal hearing was fixed for 12.12.2018. Due to administrative exigencies case could not be taken up and the same was adjourned for 31.12.2018. Appellant vide its email dated 27.12.2018 sought adjournment for one week. Next date of hearing was fixed for 08.01.2019 but the appellant sought the adjournment and accordingly the case was adjourned to 23.01.2019. The appellant vide email dated 23.1.2019 made a request for adjournment for one week. Finally, personal hearing was held on 03.04.2019. Advocates Shri Kishore Kunal and ETO, Rewari Shri Adityendra Singh Takshak, attended the hearing on the fixed date and time.

11.1 During the hearing the appellant while reiterating the submissions

made in their appeal papers put forth that the basic emphasis of their submissions was that hiring is different from the renting and thus eligible to claim ITC on hiring of buses and cars for transportation of their employees.

11.2 He submitted that the buses given by the contractor to the Applicant do not fall under the definition of cab. Section 17(5)(b)(iii) only contemplates inclusion of renting of cab as a input supply on which input tax credit on input tax paid under the Acts is not available. However, there is no restriction provided on renting of bus under section 17(5)(b)(iii) and therefore, input tax paid on renting of bus under the Acts is available.

11.3 He further emphasized that Uttarakhand High Court in the case of Commissioner of Customs & Central Excise vs Sachin Malhotra reported as 2015 (37) S.T.R.684 (Uttarakhand) has held that under the rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle, wherever he wishes, and he is only obliged to keep the holder of the licence informed of his movements from time to time. When a person chooses to hire a car, which is offered on the strength of a permit issued by the Motor Vehicles Department, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with himself. The customer is merely enabled to make use of the vehicle by travelling in the vehicle. In the case of a passenger, he is expected to pay the metered charges, which is usually collected on the basis of the number of kilometers travelled. These are all matters, which are regulated by the Government. Unlike the said scenario, in the case of a rent-a-cab scheme, as is clear from the very fundamental principle underlying the scheme, it is to give the hirer the freedom to use the vehicle as he pleases, which, undoubtedly, implies that he must have possession and control over the vehicle. This is the fundamental distinction between rent-a-cab and a pure case of hiring.

11.4 Shri Kishore Kunal Advocate for appellant further submitted that vide CGST (Amendment) Act, 2018, section 17 ha been amended with effect from 30.08.2018 which specifically allows the ITC on motor vehicles for transportation of persons having approved seating capacity of more than 12 persons when they are used for making taxable supplies of transportation of passengers.

11.5 He also contended that the intention of the legislature appears to be to deny credit only in respect of motor vehicles when used for personal purposes which is also clear from the memorandum explaining the recent amendments to Section 17 (5). In the present case, the Appellant requires the buses and cars for plying the employees to the factories from where output supplies are being made. Thus, denying the credit would be contrary to the intention of the legislature.

Discussion and Findings:

12. We have considered the material on record including the appellants grounds, submissions, statutory provisions etc. In terms of Section 101(1) of the Act, this Appellate Authority is mandated to pass such order as it thinks fit, confirming or modifying the ruling appealed against.

13. We now proceed to record our discussions and findings.

13.1 The appellant has contended that hiring of vehicle is different from renting and hence the restriction on Rent-a-Cab service specified in section 17(5)(b)(iii) to input tax credit on GST charged is not applicable and they are eligible for input tax credit. Further the appellant contended that Appellant has fulfilled all eligibility conditions for taking input tax credit specified in Section 16 of the Act.

13.2 The main question for determination in this appeal is (i) what is rent-a-cab. (ii) whether renting of vehicle is different from hiring; and (iii) whether input tax credit on GST charged by the contractors for hiring of buses and cars for transportation of employees is admissible when there is a restriction on admissibility of input tax credit on Rent-a-Cab service as provided in section 17(5)(b)(iii) of CGST Act, 2017 and HSGST Act, 2017.

14. First of all we take up the issue what is Cab. We have observed that the Authority for Advance Ruling, Haryana in its ruling has discussed this issue in detail. We find that where any commercial vehicle is hired for transportation of passengers, it would be squarely covered by the phrase "rent-a-cab". In other words, any person who provides motor vehicle designed to carry 'passengers', on rent, would be included. This also implies that it includes renting of motor cars, motor cabs, maxi cabs, minibuses, buses and all other motor vehicles which are designed to carry passengers, irrespective of their capacity to carry passengers. The contentions of the applicant that hiring of buses which can carry large number of passengers would not qualify under "rent-a-cab" is found to be untenable and the activity of the contractor in the instant case, providing buses or cars on hire to the applicant, is specifically covered under the meaning of "rent-a-cab" which makes the impugned supply as ineligible for ITC in terms of Section 17(5) of the CGST/HGST Act, 2017. Further, we find that the appellant had not challenged that the cars and buses hired by them do not fall under the definition of cab.

15. Now we take up the second issue whether renting of vehicle is different from hiring. In this regard appellant has contended that hiring of Buses and Cars for transportation of employees is not in the nature of rental

service. In terms of the Motor Vehicle Act, 1988 ("MV Act") read with the Rent-a-Cab Scheme, 1989, the activity of 'hiring is different than one of renting'. Appellant further contended that 'Hiring' of Motor Vehicles is different than 'renting' inasmuch as renting involves giving possession and control of the 'motor cab' over to the renter who is desiring to drive the motor cab himself or gets the driver to drive the motor-cab for his own use. Whereas in case of 'hire a car', the contractor retains the control and possession of the motor-cab, and is responsible to provide transportation services for consideration which is dependent on the usage i.e. number of kilometres travelled and/or the number of hours the motor-cab is used. In this regard appellant relied upon the judgment of Uttarakhand High Court in the case of Commissioner of Customs & Central Excise vs Sachin Malhotra reported as 2015 (37) S.T.R.684 (Uttarakhand).

15.1 We find that service tax was first introduced in the budget of 1994 w.e.f. 1-7-1994. Initially, only few services were proposed to be taxed and later the net was widened. The services provided by any person under a rent-a-cab scheme operator was also included in the definition of taxable services but was exempted up to 31-3-2000. The exemption was later withdrawn and such service was covered within the charging Section 66 of the Finance Act.

The relevant provisions of the Finance Act are reproduced herein below :-

"Definitions.

65. In this Chapter, unless the context otherwise requires. -

.....

.....

(105) "taxable service" means any service provided or to be provided;

.....

.....

(o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;"

Section 66 of the Act is the charging Section and it at the relevant time provided that there shall be levied tax referred to as service tax at a particular rate of taxable service referred to inter alia in sub-clause (o) of Clause (105) of Section 65 and collected in such manner as may be prescribed.

15.2 On the above issue, we find that in the case of Anil Kumar Agnihotri vs Commissioner Central Excise, Kanpur, 2018 (10) G.S.T.L.288 (All.), Hon'ble Allahabad High Court departed from the judgment of Customs & Central Excise vs Sachin Malhotra reported as 2015 (37) S.T.R.684 (Uttarakhand). Hon'ble Allahabad High Court has held as under:

"16. *A plain and simple reading of the relevant provisions would reveal that what is sought to be taxed under the Act is the service provided by a person under a rent-a-cab scheme. It makes no distinction between renting or hiring. The two terms have not been specifically defined under the Act and as such they have to be assigned the meaning which is acceptable in common parlance. Ordinarily, in common usage, there is hardly any distinction between 'renting' or 'hiring' and both the terms are usually used as synonym.*

17. *In the case at hand we find that the appellant indulges in providing service under a rent-a-cab scheme in relation to a cab and therefore irrespective of whether he retains possession and control of the vehicle or passes it to the consumer, the service so rendered by him would fall within the taxable service as defined under Section 65(105)(o) of the Act and is chargeable to tax under Section 66 of the Act.*

18. *The "rent-a-cab scheme" 1989 formulated by the Central Government in exercise of powers under Section 75 of the Motor Vehicles Act, 1988 providing for obtaining a licence by the operator of the scheme has nothing to do with the provisions relating to the imposition/chargeability of service tax. Therefore notwithstanding the above scheme, any person providing service of renting a motor cab would be amenable to service tax under the Act."*

15.3 From the above, it is seen that the taxing statute, do not make any distinction between renting or hiring. Further, irrespective of possession and control of the vehicle, the service so rendered falls within the taxable service. Thus the contention of appellant that hiring of vehicle is different from renting is untenable.

16. Now we take up the third issue whether input tax credit on GST charged by the contractors for hiring of buses and cars for transportation of employees is admissible when there is a restriction on admissibility of input tax credit on Rent-a-Cab service as provided in section 17(5)(b)(iii) of CGST Act, 2017 and HSGST Act, 2017 which is the main issue/ question.

16.1 To determine the aforesaid main question / issue, it would be appropriate to refer to the statutory provisions applicable in the given context.

Section 16. Eligibility and conditions for taking input credit:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to

take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

16.2 A plain reading of the aforesaid provisions of Section 16 provides that in order to be entitled to take input tax credit, the following conditions are required to be fulfilled:

(i) The person availing the credit should be a registered person;
(ii) The person availing input tax credit is in possession of a tax invoice or debit note issued by a supplier registered under this Act;
(iii) The credit should be of input tax charged on any supply of goods or services or both to the registered person;
(iv) The person availing input tax credit should have received the goods or services or both;
(v) The said supply of goods or services or both are used or intended to be used in the course or furtherance of his business; and
(vi) Has furnished the return under section 39.

16.3 In the facts of the present case, there is no dispute that the appellant had not fulfilled the aforesaid conditions. However, we note that Section 17 of the Central Goods and Services Tax Act, 2017 and HSGST, Act, 2017 provides certain restrictions and according to which input tax credit on certain goods or services or both are not admissible. Section 17 of the Acts, ibid reads as under:

16.4 Section 17. Appointment of credit and blocked credits:

.....
.....

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) **rent-a-cab,** life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

16.5 We have also noted that certain amendment in the Central Goods and Services Tax Act, 2017 have been made vide The Central Goods and Services Tax (Amendment) Act, 2018 (No.31 of 2018) published in the Gazette of India on 30.08.2018. The amended Section 17 (5) of Central Goods and Services Act is reproduced below:

" (b) in sub-section (5), for clauses (a) and (b), the following clauses shall be substituted, namely:— "(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons

(including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) .....

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, ***renting or hiring of motor vehicles****, vessels or aircraft* ***referred to in clause (a) or clause (aa) except when used for the purposes specified therein****, life insurance and health insurance:*

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) .....

(iii) ....."

16.6 In view of the above statutory provisions, we find that the appellant are fulfilling the conditions as prescribed under Section 16 of CGST Act, 2017 and HSGST Act, 2017. We further find that after amendment, benefit of Input Tax Credit has been extended to the motor vehicles having approved seating capacity of more than thirteen persons when they are used for making taxable supplies of transportation of passengers. Therefore, the appellant is eligible to input tax credit of the GST charged by the Contractor for hiring of buses only having approved seating capacity of more than thirteen persons for transportation of employees after amendment of th Act, ibid with effect from 30.08.2018.

17. In sum, and having regard to the questions framed in the appellant's application for Advance Ruling and for the reasons cited supra, we render the ruling question wise as follows:

Sr.No.	Question framed for Advance Ruling	Ruling (by this Appellate Authority)
1	Whether the applicant (YKK) is eligible to take input tax credit on GST charged by the Contractor for hiring of buses for transportation of employees?	Yes, applicant is eligible to take input tax credit on GST charged by the Contractor for hiring of buses having approved seating capacity of more than thirteen persons for transportation of employees after amendment in CGST Act, with effect from 30.08.2018. Prior to 30.08.2018 Input Tax Credit on buses was not admissible.
2	Whether the applicant (YKK) is eligible to take input tax credit on GST charged by the Contractor for hiring of cars for transportation of employees?	No, applicant is not eligible to take input tax credit on GST charged by the Contractor for hiring of cars for transportation of employees.
3	Whether the restriction on "Rent a Cab" service specified in Section 17(5)(b)(iii) is applicable to input tax credit on GST charged by the Contractor for hiring of buses for transportation of employees?	Yes, the restrictions on "Rent-a-Cab" service specified in Section 17(5)(b)(iii) at the relevant time is applicable to input tax credit on GST charged by the Contractor for hiring of buses for transportation of employees. However, after amendment in CGST Act, with effect from 30.08.2018, there is no restriction on hiring and renting of motor vehicles having approved seating capacity of more than thirteen persons.
4	Whether the restriction on "Rent a Cab" service specified in Section 17(5)(b)(iii) is applicable to input tax credit on GST charged by the Contractor for hiring of cars for transportation of employees?	Yes, the restrictions on "Rent-a-Cab" service specified in Section 17(5)(b)(iii) is applicable to input tax credit on GST charged by the Contractor for hiring of cars for transportation of employees. Further even after amendment of CGST Act, with effect from 30.08.2018, input tax credit is not available on GST charged by the contractor for hiring/ renting of motor vehicles having

		approved seating capacity of not more than thirteen persons (including Driver) for transportation of passengers.

18. Accordingly we pass the following order:

ORDER

The Advance Ruling given vide HAAR Order No. HAR/HAAR/R/2018-19/04 dated 11.07.2018 passed by the Haryana State Authority for Advance Ruling in re: M/s YKK India Pvt Ltd., Plot No. 699, Sector-2, Plot No. 122, Sector-6, HSIIDC, Growth Centre Bawal, District Rewari, Haryana, is modified as specified in para 17 supra.

Amit Kumar Agrawal
Commissioner,
Excise & Taxation,
Haryana

Anil Kumar Jain,
Chief Commissioner,
Central Goods & S. Tax Zone,
Haryana