

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S.
98 OF THE GOODS AND SERVICES TAX ACT, 2017

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 08.07.2019 (ARN No. – AD0907190014622) from M/s ION Trading India Private limited, Building No. 2, Infospace, 4-6th Floor, Block-B, Plot-2, Sector-62, Noida, Uttar Pradesh- 201 309. - Order- Reg.

- 1). M/s ION Trading India Private limited, Building No. 2, Infospace, 4-6th Floor, Block-B, Plot-2, Sector-62, Noida, Uttar Pradesh (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAECA4325R1Z9.
- 2). The applicant is a private limited company, wholly owned subsidiary of M/s ION Trading UK Limited and engaged in the business of software development which is exported to the overseas company.
- 3). As per the application for advance ruling filed by the applicant, the free parking slot made available by the building authorities to the applicant are not sufficient, so the applicant arranged to obtain more parking slots from building authority on payment of additional lease charge and this amount is equally recovered from the employees using the parking slots. Around Rs. 1,500/- is recovered from employee for car parking and Rs. 500/- towards two-wheeler parking. Any additional amount i.e. penalty/additional charges imposed by the building authorities are paid by the employee directly to the building authority.



4). As regard to the parking charges recovered from the employee, the following questions have been posted by the applicant, in his application dated 08.07.2019 (received by the Authority on 15.07.2019), before the Authority: –

- i. Whether amount recovered from the employees towards car parking charge payable to Shantiniketan Properties Private Limited (building authorities), would be deemed as “Supply of service” by the applicant to its employees?
- ii. If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a “Pure Agent”? If valuation is not accepted as NIL, what would be the value of such supply?
- iii. If GST is payable on the such amount recovered from the employees, whether the GST paid by the applicant to building authorities towards car parking charges would be admissible as input tax credit against supply of car parking services to employees ?

5). The applicant has further submitted that as per their view they are in the business of development and export of software which is their business activity in terms of the definition of business in the Section 2(17) of the CGST Act. Facilitation of parking slots between employees and building authorities can not be treated as an activity which is incidental or ancillary to the activity of developing software, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function and which will take the business activity forward. If parking slots are not provided, there will definitely be some inconvenience to the employees but it would not facilitate the business activity of developing software. Accordingly the applicant has concluded that facilitating the parking slot, is not an activity by them in the course of or in furtherance of its business of software development.

6). The applicant also paid reliance on various case laws including the Advance



ruling pronounced by the Maharashtra Authority for Advance Ruling in the case of M/s. Posco India Pune Processing Center Private Limited to vindicate their stand.

7). The applicant was granted a personal hearing on 24.09.2019. Shri Ravi Jain, CA, and Shri Saket Batra, CA, Authorized representatives of the applicant, appeared for hearing. Sh. Diwakar Singh Bisht, Superintendent Range-IX, Division-II, Noida, represented the department during personal hearing.

During the course of personal hearing, certain issues were come up which were discussed in detail. The authorized representative stated that they would like to submit few more documents viz. copy of "Employee Handbook", Agreement between Building Authorities and applicant, Trail of communication among employees, company and building authorities to explain the SOP, in few cases, trail of financial transactions to clarify the "pure agent" status of the company, "Offer letter/Employee Contract" to support their case. Vide email dated 30.09.2019, the applicant submitted copy of letter dated 28th August 2018, addressed to the applicant issued by the M/s Shantiniketan Properties Private Limited (building authorities), sample ledger, Tax Invoice issued by M/s Shantiniketan Properties Private Limited, employees handbook, offer letter and detail of amount collected from employees towards parking slots.

8). The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter, which were received in this office vide letter C. No. V (30) Tech./Div-II/Adv. Rule/37/2019-20/8880 dated 18.09.2019, wherein it has been reported that the car parking facility is being provided during the course of business and the same will certainly be beneficial to their employees for furtherance of business of the applicant. Accordingly, the jurisdictional officer has opined that the said activity is taxable under GST and liable for Tax.



DISCUSSION AND FINDING

9). At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

10). We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(e) of the CGST Act 2017 being a matter related to determination of the liability to pay tax on any goods or services or both. We therefore, admit the application for consideration on merits.

11). We observe that the questions sought by the applicant are-

- i. Whether amount recovered from the employees towards car parking charge payable to Shantiniketan Properties Private Limited (building authorities), would be deemed as "Supply of service" by the applicant to its employees?
- ii. If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?
- iii. If GST is payable on the such amount recovered from the employees, whether the GST paid by the applicant to building authorities towards car parking charges would be admissible as input tax credit against supply of car parking services to employees ?



12). The first question before us to decide is to whether the amount recovered from the employees towards car parking charges is a "Supply of service" by the applicant to its employees.

13). We observe that Section 7(1) of the CGST Act 2017 defines the term "Supply" as:

" 7. (1) For the purpose of this Act, the expression "supply" includes-

- a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- b) import of services for a consideration whether or not in the course or furtherance of business; and,;*
- c) the activities specified in Schedule I, made or agreed to be made without a consideration;*
- d) the activities to be treated as supply of goods or supply of service as referred to in Schedule II.*

14). The term "Service" is defined, as per Sub-Section (102) of Section 2 of the CGST Act 2017, as:

"Service means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged."

15). Here we observe that while defining the "Supply" emphasis has been made upon the term *"in the course or furtherance of business"*.

Further, the term 'Business' has been defined under section 2(17) of the CGST Act, 2017, as below:

"(17) "business" includes—



- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;”.

16). We observe that as per the letter dated 28th August 2018, addressed to the applicant issued by the M/s Shantiniketan Properties Private Limited (building authorities), there is a Rent Agreement entered into between the applicant and the building authorities and the above referred letter is issued in response to the additional parking space sought by the applicant. The initial Rent agreement copy is not provided by the applicant. Further as per the “Employee Handbook” provided by the applicant “the amount to be recovered from monthly salary of employee availing the parking slots is around INR 1500 per month and INR 500




per month for a four wheeler and two-wheeler respectively.”, however we notice that this amount shown in the Employees Handbook is not tallying with the details of “amount recovered from the employees” provided by the party. Further, from the letter dated 28th August 2018, it seems that certain parking slots were allotted free of cost to the applicant. In this regard, the procedure as to how these free slots are accounted/allotted to the employees is not explained by the applicant. Further, the ‘trail of financial transactions to clarify the “pure agent” status of the company’, as promised by the authorized representative of the applicant at the time of personal hearing, was also not provided by the applicant.

RULING

In the absence of requisite documents, as discussed in above paras, no ruling can be given on the questions asked by the applicant.

The application for advance ruling filed by the applicant is disposed off accordingly.


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Sanjay Kumar Pathak
Member of Authority for Advance
Ruling

To,

M/s ION Trading India Private limited,
Building No. 2, Infospace, 4-6th Floor,
Block-B, Plot-2, Sector-62, NOIDA,
Uttar Pradesh- 201 309



AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 42

Date: 27.09.2019

Copy to -

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CX, Noida-I, C-56/42, Sector-62, Noida, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-II, Noida, Room No. 402, 4th Floor, C-56/42, Renu Towre, Sector-62, Noida, Uttar Pradesh- 201 307;
5. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow - 226010, within 30 days from the date of service of this order.

