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| GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009. |  |
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ADVANCE RULING NO. GUJ/GAAR/R/2022/35
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/16)

Date:07.06.2022

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| Name and address of the applicant | : | M/s. Vadilal Enterprises Ltd., 10 th Collonade Building, Opp.Iscon BRTS ,Ambli Bopal Road, S.G.Highway, Ahmedabad. 380015 |
| GSTIN/ User Id of the applicant | : | 24AABCV0988J1Z2 |
| Date of application | : | 10-03-2022 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | <i>(d) and (e)</i> |
| Date of Personal Hearing | : | 05-05-2022 |
| Present for the applicant | : | Shri Amal Dave, Advocate |

Brief facts

M/s. Vadilal Enterprises Ltd. (hereinafter referred to as Vadilal for the sake of brevity) submitted that it supplies ice-cream in various States in addition to the supplies in Gujarat State. For transporting the goods to places located in different States, Vadilal has been availing facility of refrigerated vehicles because the goods have to be stored and preserved at a particular temperature for avoiding deterioration in quality, for which such refrigerated vehicles are an essentiality. Various independent agencies, who are owners of refrigerated vehicles or are arranging for such vehicles, have been providing refrigerated vehicles to Vadilal for transportation of its goods in question. Formal agreements in writing with such independent transporters are made, and the terms of providing refrigerated vehicles and transporting the applicant's goods and the rates of transportation are agreed between the parties under such agreements. Specimen agreements have been submitted.

2. Vadilal submits that after delivering the goods at the concerned destination, the refrigerated vehicle comes back; and during such return journey, ordinarily, the vehicle travels empty i.e. without transporting any goods. However, plastic trays in which Vadila transported and delivered the goods at the concerned destination may be lying empty at such place, and therefore

such empty plastic trays may be brought back in the refrigerated vehicle during their return journey.

3. Vadilal submits that the independent agencies who supply refrigerated vehicles charge the contracted rates as transportation charges, which is for the round trip of the refrigerated vehicle i.e. for transporting Vadilal's goods to the concerned destination and for bringing back the vehicle after such delivery. Appropriate amount of GST is paid on the transportation charges for the round trip.

4. Vadilal submitted that since refrigerated vehicles ordinarily travel back without any goods being transported i.e. in empty condition; it has engaged a few agents/agencies who could locate customers whose goods could be transported in the empty refrigerated vehicles during their return journey. M/s. Celsius Logistic Solution Pvt. Ltd. has been appointed by Vadilal as a middle agency/agent for locating customers whose goods could be transported in the empty vehicles. If empty vehicles during their return journey are thus used for transporting goods of other customers, then some revenue could be generated by charging transportation expenses from such parties, which may result in additional revenue to Vadilal and reduction in overall cost to the organization. Appropriate amount of GST would however be paid on the transportation charges recovered from such customers who were located by agents/agencies engaged by Vadilal, because their goods were transported in the concerned vehicles during the return journey.

5. Vadilal submitted that in some cases, the vehicles may also be used for further travel and transportation, after delivering the goods at the branches or depots of the applicant. It is possible that the middle agency engaged by the applicant for locating customers may get a customer whose goods are to be transported from the place of the applicant's branch/depot to some other place; and therefore the empty vehicle may not be straightaway brought back to its original place/location from where its journey for transporting the applicant's goods began. The applicant submitted as follows:

(i) The refrigerated vehicle hired by the applicant for transporting Ice cream from the applicant's premises at Pundhra, Taluka:Mansa, District: Gandhinagar, in the State of Gujarat travelled to Raipur (State of Chhatisgarh); and delivered and unloaded the goods at Raipur branch/depot. The agency appointed by the applicant located a customer whose goods are to be transported from Raipur to Patiyala in the State of Punjab, and therefore the empty vehicle is used for further transportation from Raipur to Patiyala (instead of bringing the vehicle

back to Pundhra). From Patiyala, the vehicle may travel back to Pundhra; or in case the agency could locate any customer at Patiyala whose goods are to be transported to Noida in the State of Uttar Pradesh, then the same vehicle may be used for transportation service from Patiyala to Noida also. In all such cases, the transportation charges would be recovered by the agency from the customers located by it, whereas the applicant would charge transportation expenses from the agency. M/s. Celcious Logistics Solutions Pvt. Ltd. is the middle agency/agency for locating customers in respect of such further transportation and journey also.

6. Vadilal submits that in case the refrigerated vehicles are used for transporting goods of independent customers during the return journey or for further travel as discussed in para (5) above, then the applicant would have to engage other transporters for bringing back empty plastic trays to the applicant's premises at Ahmedabad, and other locations where the applicant has such business operations. For this purpose, other independent transporters would be employed and appropriate transportation charges (i.e. freight) would be paid to them, and applicable GST liability on such transportation charges would also be discharged.

7. Question on which Advance Ruling sought:

1. Who is the person liable to pay GST for transportation of goods of customers located by an independent agency engaged by the applicant, while refrigerated vehicles used for transportation of the applicant's goods travelled back on return journey, after unloading and delivering the applicant's goods at the destination?

2. Who is the person liable to GST for transportation of goods of the customers located by an independent agency when the vehicles used for transportation of the applicant's goods are used for further transportation, after unloading the applicant's goods at the destination of the applicant's branches or depots?

3. Who is the person liable to pay GST in respect of goods transport agency service used for bringing back empty plastic trays belonging to the applicant from various places (like branches or depots) to the applicant's premises?

4. Whether the applicant can avail Input Tax Credit of the entire amount of GST paid on the transaction of the applicant's goods in refrigerated vehicles although such vehicles travel empty (i.e. without the applicant's goods being loaded therein) during the return journey?

8. Vadilal has submitted as follows with respect to the 1st and 2nd question:

(i) Vadilal's interpretation is that reverse charge method under Notification No.13/2017-CT (Rate) is applicable, and accordingly either the independent agency (i.e. M/s. Celcius Logistics) or the persons whose goods would be transported in the return or onwards journey, is the person liable to pay GST in this transaction.

(ii) In both these transactions, three parties would be involved. One party is the Vadilal, the second party is the agency employed by the applicant for locating prospective customers (i.e. M/s. Celcius Logistics), and the third party is the actual customers whose goods would be transported in the vehicle. In this tripartite arrangement, Vadilal would be raising bill/invoice for transportation charges to the middle agency (i.e. M/s. Celcius Logistics) in respect of transportation of goods of the customers located by such agency. A specimen bill/invoice that the applicant would be raising for this transaction is enclosed. The details of the customer (i.e. the owner of the goods) would be shown on the invoice with the description of the goods, and the transportation charges recovered from the middle agency and the amount/rate agreed for transportation would be shown with GST payable in this bill. Though the vehicle does not belong to the applicant, the transportation service by utilizing such vehicle would be provided by the applicant to the agency for the customer located by the agency. Actually, the vehicle is hired by Vadilal from the owner, and therefore the vehicle would be under the possession of the applicant till it returns to the original place. But reverse charge method is applicable in this transaction, and therefore the applicant is not liable to pay GST in this transaction.

(iii) As discussed in para (5) above, the vehicle may be utilized for further transportation, instead of the return journey. In the example discussed in para (5) above, the applicant's goods would be delivered and unloaded at Raipur, and thereafter the vehicle would travel from Raipur to Patiyala and then from Patiyala to Noida, and the like. For such transportation service, Vadilal would raise a bill/invoice to the middle agency (i.e. M/s. Celcius Logistics) in respect of transportation of the goods of the customers located by such agency. Like the invoices referred to above, the details of the customer (i.e. the owner of the goods), the description of the goods and the transportation charges recovered by the applicant by the middle agency would be shown with the GST payable thereon in such invoice. The middle agency would make payment of transportation charges so billed to Vadilal. Specimen bills/invoices that Vadilal

would be raising in such cases on the middle agency (i.e. M/s. Celcius Logistics) are enclosed.

(iv) In both the above transactions (i.e. transportation of goods of third party customers during return journey to Pundhra, and also for transportation of goods of third party customers from one place to another as discussed in para (5) above), the middle agency (i.e. Celcius Logistics) would raise their bills to the customers who are located by them, and whose goods are transported in the vehicle. Vadilal would not know the amounts charged by the middle agency from third party customers because that would be a transaction between the middle agency and the customers whose goods are transported. Who would be the person liable to pay GST for the amounts charged and recovered by the middle agency (i.e. M/s. Celcius Logistics) from the actual customers is also not the subject matter of the present application inasmuch as the applicant is not a party to such transaction.

(v) It is submitted that in both the transactions above referred, Vadilal is concerned about the liability to pay GST in respect of the transportation service provided by the applicant to the middle agency, and the transportation charges billed and recovered by the applicant from the middle agency.

(vi) GST is a tax on supply of goods or service or both; and the supplier is the person liable to pay tax.

(vii) Goods transport agency is explained under Notification No.11/2017-Central Tax (Rate) as any person who provides service in relation For GTA service, the Central Government has laid down reverse charge mechanism by virtue of Notification No.13/2017-Central Tax (Rate), and such reverse charge is applicable when supply of service by a goods transport agency was in respect of transportation of goods by road to any factory, or any society, or any cooperative society, or any person registered under the GST, law or anybody corporate, or any partnership firm, or any casual taxable person. The transaction here would be between the applicant and the agency (i.e. M/s. Celcius Logistics) for transporting goods of the customers. This agency appointed for locating the customers is only a person in the nature of a commission agent, and not in the nature of GTA service provider. Therefore, for all practical and legal purposes, it would be Vadilal who would be the GTA service provider to this agency for the customers whose goods are transported in the vehicles (i.e. refrigerated vans) after Vadilal's goods are unloaded at the applicant's branch

or godown premises, for which reverse charge making the agency or the Customer as the person liable to pay GST is attracted to transport of goods by road and issues consignment note, by whatever name called. In view of this definition, ownership of the vehicle used for transportation of goods is immaterial. The condition of a person issuing consignment note is also procedural or regulatory; and it is not open to a person actually providing service in relation to transportation of goods to contend that he was not "goods transport agency" and hence not liable to pay GST only because any document like a consignment note was not issued by him. The tax is imposed for providing service in relation to transport of goods by road.

(viii) In view of the above factual and legal position, the applicant submits that it would be the service provider in these transactions, but the liability to pay GST would be that of the independent agency who would be locating the customers, or the customers whose goods are actually transported by the applicant. Such transactions are of services by a goods transport agency (GTA) in respect of transportation of goods by road, classifiable under Service Code 9967, to which reverse charge method provided under Notification No.13/2017-CT (Rate) is applicable.

9. The applicant submits that for question/issue No.3, it is the applicant who is the person liable to pay GST on transportation charges for bringing back plastic trays through independent transporters/contractors. The applicant submitted as follows :

(i) For bringing back empty plastic trays to its premises, independent goods transport operators would be employed, and therefore this transaction should be treated as transportation service by such transporters to the applicant. The applicant is a trader, and the applicant is also a person registered under the GST law, and is also a body corporate established under the Companies Act; and therefore reverse charge mechanism of Notification No.13/2017-CT (Rate) is applicable in this transaction, and consequently it is the applicant's liability to pay GST on transportation charges for plastic trays under reverse charge. This is an input service for the applicant, and therefore credit of GST paid under reverse charge mechanism would be fully admissible to the applicant.

(ii) In this transaction, the transportation service is actually provided by the independent transporters/contractors, but reverse charge mechanism is applicable in case of goods transport agency service, and the person who is liable to pay freight or transportation charges is also liable to pay GST if such person falls under any of the seven categories specified under the above

referred Notification No.13/2017-CT. Therefore, the applicant is to be treated as the person liable to pay GST on transportation charges in respect of vehicles used for bringing back plastic trays to the applicant's premises.

10. In respect of admissibility of ITC, raised in Question 4, the applicant submits that ITC of the entire tax paid on the round trip of the refrigerated vehicles would be admissible, without reversal of any portion of such credit though the refrigerated vehicle would be returning empty and submitted as follows:

(i) In the case of transportation and delivering the goods (traded and dealt in by the applicant) to other premises of the applicant themselves, the transportation service of refrigerated vehicles is provided by independent transporters and vehicle owners. Such service providers raise their bills to the applicant, and show details like the name of the applicant and the place of destination, distance in terms of Kilometers, transportation charges etc. Some of the GTA service providers are registered with the GST Department whereas some of them are not registered persons. The transporters who are registered with the GST Department also show details of GST payable by them on value of the transportation service while raising the bill in the nature of tax invoice. But those who are not registered persons, they do not show details of GST payable, while showing all other details on their bills. Specimen tax invoices issued by transporters registered with the GST Department and also specimen bills issued by transporters who are not registered persons, are enclosed.

(ii) In these cases, transporters have charged the agreed transportation charges, which are the fixed rate for the round trip. Even though the vehicle like a refrigerated van may have to come back without transporting any goods during the return journey, the transporters actually charge for transportation service for the entire round trip; and no separate charges are agreed between the parties for transporting ice cream from the applicant's premises to the concerned location treating it as one side journey, and for return journey without any goods treating it as a separate return journey. The parties have treated the transaction as that of a round trip, and the transportation charges are agreed between the parties for the entire transaction; and therefore, the transportation charges billed by the transporters in this transaction is the value of taxable supply of "goods transportation service", and the applicant is legally entitled to take ITC of GST paid on transportation charges for this transaction. Irrespective of the fact whether GST is paid by the transporters being registered persons or by the applicant under reverse charge mechanism, the credit of GST actually paid on this transaction would be admissible to the applicant because the applicant is the recipient of transportation service in this case.

(iii) It is submitted that as per applicant view, the applicant is not obliged to reverse or pay back any part of ITC on the basis that the vehicle comes back empty after delivering ice cream at the destination, because it is one round trip transaction of the vehicle for which the parties have agreed, and the transportation charges are also agreed for the entire trip treating it as one composite transaction. The agreement between transporters and the applicant is for hiring a refrigerated vehicle and for use of such refrigerated vehicle for transporting and delivering the applicant's goods at the concerned destination. After delivering the applicant's goods at the destination, the refrigerated vehicle may come back empty, but no separate charges are agreed between the parties for one way trip from the applicant's premises to the destination for delivering the goods, and no separate charges are agreed between the parties for the return journey of the vehicle when the goods in the nature of ice cream are not loaded in the refrigerated vehicle.

(iv) After delivering the goods at the destination, the refrigerated vehicle has to come back empty, inasmuch as the goods i.e. Ice cream loaded therein has been delivered at the destination and no such goods like Ice cream are to be brought back from such destination in the vehicle. The tax invoices and bills of all transporters are for the total Kilometers in respect of a round trip, and thus the transportation charges recovered by the transporters are for one entire trip, without any bifurcation of transportation charges from the applicant's premises to the concerned destination and the return journey.

(v) By virtue of the scheme of Section 17 of the CGST Act, a person may be required to reverse proportionate ITC if input tax service was partly used for exempt or non-taxable outward supply. But return trip of the refrigerated vehicle is not a case where the input service in the nature of goods transportation was partly used for non-taxable outward supply. The transporters are hired for a round trip involving transportation and delivery of the applicant's goods to the concerned destination and for bringing back the empty vehicle. The scheme of Section 17 does not take into its sweep a case like the present one; because it is not legal nor permissible to suggest that the refrigerated vehicle travel back empty and therefore ITC of GST attributable to the value of return journey was inadmissible. The transaction of transportation of Ice cream by utilizing refrigerated vehicles is one composite service transaction, for a complete round trip, and therefore ITC of entire GST paid on value of such round trip transaction is legally admissible to the applicant.

Personal Hearing:

11. Virtual hearing, on 5-5-22, was attended by Shri Amal Dave, Advocate and he reiterated the submission.

Revenue's Submission

12. Revenue neither submitted its comments nor appeared for the hearing.

Findings

13. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

14. We have carefully studied and considered the submissions before us.

15. We agree with the applicant's submission with regard to Question 3. The Serial no 1 to the Notification 13/ 2017-CT (R) dated 28-6-17 reads that the GST liability for supply of service by a GTA in respect of transportation of goods by road to a registered person shall be paid by the recipient of such services. We find M/s Vadilal liable to GST under RCM for the GTA service supplied to it.

16. We agree with the applicant's submission with respect to Question no 4 that ITC is admissible to Vadilal, on GST paid on GTA service supplied to it, despite the fact that refrigerated vehicles travelled empty during the return journey as Vadilal has paid an agreed freight to the GTA for its service and this agreed freight was inclusive of both onward and return journey (round trip).

17. We delve into Vadilal's service agreement with M/s Celcius. Upon reading the agreement and the Invoices raised by Vadilal on M/s Celcius, We find the following facts emerging:

- i. Vadilal makes available the reefers (refrigerated vehicles) to M/s Celcius enabling Celcius in transporting the goods of its (Celcius) potential customers. Celcius may use the reefers for transporting its customers goods either during the return journey of the reefers or for

- extended journey of the reefers from the point of destination of transporting Vadilal goods.
- ii. These subject reefers belong to the GTA who supplies GTA service to Vadilal.
 - iii. The relationship between Vadilal and Celcius is principal to principal basis and shall not be considered a partnership or a relationship of agency as per 11.1 of the Service agreement.
 - iv. For the said reefer hiring facility supplied by Vadilal to Celcius; Vadilal raises invoices on Celcius with description of the service as hire charges of the vehicle; certain invoices also mentioned loading and unloading charges in addition to vehicle hire charges. On perusal of the Tax Invoices No. IN2153031078 dated 18-2-22 and IN2153026801 dated 31-12-21 raised by Vadilal on Celcius, there is neither mention of freight charges nor GST rate, both the said Invoices reflect zero percent IGST rate
 - v. Celcius, receiving this service from Vadilal, pays the consideration, as per invoices raised on it. In this way, Vadilal intends to generate additional revenue.
 - vi. We find that Vadilal provides service to Celcius, enabling Celcius to carry on its (Celcius) business of transportating the goods belonging to its (Celcius) customers. What is forthcoming from the agreement is that Vadilal is supporting the business of Celcius and that Celcius is utilizing the services provided by Vadilal in furtherance of its (Celcius) business. This specific activity of Vadilal falls under the category of Business Support Service supply to Celcius. We find that Vadilal is supporting and facilitating the business of M/s Celcius and enabling Celcius to transport its potential customers goods to the customers desired destination. We hold that Vadilal is supplying Business Support Services to M/s Celcius.
 - vii. We dismiss the applicant's view that it is a GTA for the following reasons:
 - a. Vadilal is supplying Business Support Service to Celcius, and charging consideration from Celcius for the service supplied.
 - b. The lien of goods of customers of Celcius is not transferred to Vadilal and Vadilal is not responsible for the safe delivery of the Celcius's customers goods. Thus the responsibility of the goods being transported is not on Vadilal which is a prime feature of GTA issuing consignment note, wherein post issuance of consignment note GTA is responsible for the goods being transported.
 - c The para 2(ze) to Notification 12/2017-CT (R) dated 28-6-17, reads as follows:

(ze) “goods transport agency” means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

As per GST scheme of law, consignment note issuance, by whatever name called, is mandatory for a GTA. The issuance of consignment note indicates that the lien on goods has been transferred to the transporter and the transporter becomes responsible for the goods till its safe delivery to the consignee. This aspect is evident in the relationship between Vadilal and its GTA but is absent in the relationship between Vadilal and Celcius. The para 4.5 of the Service agreement entered between Vadilal and M/s. Celsius reads that *there shall be no lien/hypothecation of the goods /consignment in favour of Vadilal in respect of any goods/consignment carried by any of the Vadilal Reefers for any reason whatsoever. At no time shall the ownership of the goods vest in favour of Vadilal and Vadilal shall not in any case whatsoever stop the transport, delivery or unloading of the goods in any consignment.* Further, the term consignment note is not defined in GST law. We may take recourse to the Explanation to Rule 4B of Service Tax Rules, 1994 which read that a *consignment note means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.* We note that GST scheme of law makes the issuance of consignment note by a GTA, by whatever name called, mandatory. Thereby, We cannot brush aside the requirement of consignment note issuance by a GTA. We find no merit to deem Vadilal as a GTA.

18. We note that both the Question 1 & 2, hinges on Who is liable to pay GST for transportation of goods of customer of Celcius (an independent agency engaged by Vadilal). We hold that Vadilal has no locus standi, vide Section 95 CGST Act, to seek Ruling on the tax liability for a transaction entered between M/s Celcius and its (Celcius's) customers, wherein Celcius is the service provider and its customers are the service recipient. We refer to Section 103(1) CGST Act, which reads that Advance Ruling shall be binding only on the applicant who had sought it and on the concerned officer/ jurisdictional officer in respect of the applicant. In this case, our Ruling is binding on the Vadilal. This subject Ruling, vide Section 103(1) CGST Act is not binding on Celcius and its service recipients. Further, Section 95(a) CGST Act defines advance ruling as a decision provided in

relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. We find that subject Ruling is sought by M/s Vadilal and not M/s Celcius/ Celcius's customers.

19. In conspectus of aforementioned Discussion and findings, we pass the Ruling,

Ruling

1. M/s Vadilal is **not** a Goods Transport Agency. In this specific scenario presented before us, Vadilal supplies Business Support Service to Celcius (independent agency) and the tax liability is on forward charge. Further, in view of this Ruling, We hold that Vadilal has no locus standi to seek a Ruling on the which person is liable to pay GST on the activity/ service M/s Celcius supplies to its (Celcius) customers.
2. Same as above Ruling.
3. M/s Vadilal is liable to pay GST under RCM on the freight charges paid to its transporter as expounded in para 15.
4. ITC on GST paid on the transaction wherein refrigerated vehicles returned empty during return journey is admissible to M/s Vadilal as expounded in para 16.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad

Date: 07.06.2022