

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.

RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.

Members present:

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| Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034. | Smt. A. Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006. |
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Advance Ruling No. 12/ARA/2024, Dated: 25.06.2024

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) *on the concerned officer or the jurisdictional officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*

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|--|------------------------|---|
| GSTIN Number, if any / User id | | 33AAACP1935C1Z0 |
| Legal Name of Applicant | | M/s. METROPOLITAN TRANSPORT CORPORATION |
| Registered Address / Address provided while obtaining user id | | No. 2, Pallavan House, Pallavan Salai, Chennai, Tamil Nadu - 600002 |
| Details of Application | | GST ARA - 01 Application Sl.No. 05/2024, dated 22.02.2024 |
| Jurisdictional Officer | | Centre: Chennai North Commissionerate; Division: Egmore Division |
| Concerned Officer | | State: - Chennai North Division, North-III, Egmore Circle. |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought for | | |
| A | Category | Service provider |
| B | Description (in brief) | The applicant is a Government of Tamil Nadu Undertaking situated at No.2, Pallavan Illam, Pallavan Salai, Chennai -600002 and governed by the Board of Directors appointed by the Government of Tamil Nadu. The applicant operates its transport services to the public of entire Chennai Metropolitan Area. |
| Issue/s on which advance ruling required | | 1. Determination of the liability to pay tax on any goods or services or both. 2. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. |
| Question(s) on which advance ruling is required | | (I) Is collection of increased rents for the past period considered as the term "supply" under Goods and Service Tax? (II) If the answer to the first question is yes, (a) is the entire increased amount of Rs. 1,60,42,203 subject to GST? OR (b) is only the portion of the invoice value of Rs. 99,19,432 relating to after July 1, 2017, liable for GST and the rest Rs.61,22,771 were exempt as it related to service tax period? |

1. At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act, 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The applicant submitted a copy of challan dated 12-02-2024 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 12-02-2024 was physically received on 22-02-2024 as mandated under Rule 107A.

3.1. Metropolitan Transport Corporation [Chennai] Limited (hereinafter referred to as "Applicant") is a Government of Tamil Nadu Undertaking situated at No.2, Pallavan Illam, Pallavan Salai, Chennai -600 002. It is governed by the Board of Directors appointed by the Government of Tamil Nadu. The applicant's primary business activity is providing passenger transportation services, which fall under the exempted category according to Goods and Services Tax Laws.

3.2. The applicant submits that they entered into a lease agreement on 20th March 2007 with the Government of Tamil Nadu, represented by the Regional Transport Officer (RTO) Chennai, for the rental of premises owned by the applicant. The monthly rent agreed upon is Rs.100,000. The tenant RTO, Chennai initially occupied the premise of 12,934 Square feet on 01.09.2002 and partially vacated 4569.49 square feet on 11.07.2017 and have been using the remaining portion continuously till date. The applicant submitted the property details as Ground Floor and First Floor of the office building and the front and rear opening space on the Northern side of the approach road to Ayanavaram Depot and Bus Stand bearing the Door No.4, Anderson Street, Ayanavaram, Chennai -23.

3.3 The applicant submitted that according to the agreement, both the parties agreed to revise the rent once every three years based on existing government orders, starting from 1.09.2005 and due to unresolved negotiations, such rent revision for the respective years has not been implemented. That during the fiscal year 2023-24, both parties mutually agreed to revise the enhanced rent, settling on a 15% increase every three years and this revision was retrospectively calculated from September 1, 2005. Pursuant to this arrangement RTO, Chennai will pay the differential amount of Rs. 1,60,42,203/- to the applicant upon submission of Supplementary Invoices.

3.4. The applicant submitted the details regarding mutually agreed differential rent for which supplementary invoices are to be raised as follows;

| Period | Months / days | Differential Rent (Taxable Value) | GST 18% | Total Invoice |
|--------------------------|---------------|-----------------------------------|-----------|---------------|
| 01.09.2005 to 31.08.2008 | 36 Months | 5,40,000 | 97,200 | 6,37,200 |
| 01.09.2008 to 31.08.2011 | 36 Months | 11,61,000 | 2,08,980 | 13,69,980 |
| 01.09.2011 to 31.08.2014 | 36 Months | 18,75,150 | 3,37,527 | 22,12,677 |
| 01.09.2014 to 30.06.2017 | 36 Months | 25,46,621 | 4,38,392 | 30,05,013 |
| 01.07.2017 to 10.07.2017 | 10 Days | 56,420 | 10,156 | 66,576 |
| 11.07.2017 to 31.07.2017 | 21 days | 89,352 | 16,083 | 1,05,435 |
| 01.08.2017 to 31.08.2017 | 1 Month | 1,31,900 | 23,742 | 1,55,642 |
| 01.09.2017 to 31.08.2020 | 36 Months | 54,57,600 | 9,82,368 | 64,39,968 |
| 01.09.2020 to 31.08.2022 | 24 Months | 41,84,160 | 7,53,149 | 49,37,309 |
| Total | | 1,60,42,203 | 28,87,597 | 1,89,29,800 |

3.5. The applicant submitted that the tenant RTO, Chennai, having agreed to pay the enhanced rent for the retrospective years, contended that Goods and Services Tax (GST) does not apply to the enhanced amount. Their argument rests on the premise that Good and service Act came into effect only after July 1, 2017, and thus invoices related to the period prior to this date are not subject to GST. That the tenant asserts that such enhanced revision in rent pertains to a period when Service tax was applicable, hence exempt from GST.

3.6 The applicant submitted that due to this ongoing ambiguity, the applicant has been unable to raise the invoice and collect the revised amount. That in a recent communication dated December 24, 2023, the tenant expressed willingness to remit the revised rental value inclusive of GST, contingent upon the provision of successive Advance Ruling orders affirming Metropolitan Transport Corporation's stance that such rent is indeed taxable under Goods and Services Tax Laws.

3.7 Regarding the applicant's view point they submitted that recognition of such retrospective revision of rent is treated as supply as per Goods and Service act and the consideration received for such enhanced value should be taxable at the rate of 18% (9% CGST, 9% SGST).

4.1 The applicant is under the administrative control of Central Tax Authorities. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

4.2 The concerned Central authority vide letter GEXCOM/TECH/MISC/1142/2024-TECH dated 11.06.2024, stated that there are no pending proceedings against the applicant and offered the following comments;

- With regard to query no.1 the Central authority quoting the provisions of Sec. 142 (2)(a) under CGST Act, 2017 stated that the collection of increased rents for the period is considered as the term "supply" under Goods and services Act.
- With regard to query no.2 the authority stated that pursuant to agreement, the tenant will pay the differential amount of Rs. 1,60,42,203/- plus GST to the applicant upon submission of supplementary invoices.

4.3 The State jurisdictional officer, Egmore Assessment Circle stated that there is no proceedings pending in relation to the issue raised in the application by the Applicant and the Joint Commissioner(ST), Intelligence-1 stated that there is no proceedings pending or decided on the issue raised in the application by the Applicant.

5. PERSONAL HEARING

The applicant, was given an opportunity to be heard in person on 28.05.2024. Shri. G. Vignesh, Chartered Accountant, appeared for the personal hearing as the Authorised Representative (AR) of the Applicant. The AR submitted that the premises owned by the applicant was leased to Regional Transport Officer, Chennai (lessee) and it was agreed to revise the rent once every three years. However, due to unresolved negotiations the rent revision did not take place and was done only during the fiscal year 2023-24. The AR stated that the lessee though has agreed to pay the enhanced rent has contended that GST does not apply on the enhanced rent and hence they are seeking advance ruling on the said issue.

The members enquired the period from which the rent is being enhanced to which the AR stated that the rent is being enhanced from the year 2005. The members enquired if there is anything more to add to the submissions made in the application to which the AR replied that there is nothing more to add.

DISCUSSION AND FINDINGS

6.1 We have carefully considered the submissions made by the applicant in the advance ruling application and also the submissions made during the personal hearing.

6.2 The Applicant is before us seeking Advance ruling on the following questions;

1. *Is collection of increased rents for the past period considered as the term "supply" under Goods and Service Tax?*

2. If the answer to the first question is yes,

(a) is the entire increased amount of Rs. 1,60,42,203 subject to GST?

OR

(b) is only the portion of the invoice value of Rs. 99,19,432 relating to after July 1, 2017, liable for GST and the rest Rs.61,22,771 were exempt as it related to service tax period?

6.3. We find that the applicant is a Government of Tamil Nadu Undertaking and the applicant's primary business activity is providing passenger transportation services, which fall under the exempted category according to Goods and Service Tax Laws. The subject query raised by the applicant pertains to the lease agreement entered into by the applicant with the Regional Transport Officer (RTO) Chennai, for renting out the premises owned by the applicant.

6.4. We find that the applicant submits that according to the agreement, both the parties agreed to revise the rent once every three years based on existing Government orders, starting from 1.09.2005 and due to unresolved negotiations, such rent revision for the respective years has not been implemented. That during the fiscal year 2023-24, both parties mutually agreed to revise the enhanced rent, settling on a 15% increase every three years and this revision was retrospectively calculated from September 1, 2005. That pursuant to this arrangement the tenant i.e RTO, Chennai will pay the differential amount of Rs. 1,60,42,203 to the applicant upon submission of Supplementary Invoices.

6.5. We find that the applicant also submits that the tenant though has agreed to pay the enhanced rent has contended that GST does not apply on the enhanced rent and their argument rests on the premise that Good and service Act came into effect only after July 1, 2017, and thus invoices related to the period prior to this date are not subject to GST, that such enhanced revision in rent pertains to a period when Service Tax was applicable, hence exempt from GST. The applicant also submits that due to this ongoing ambiguity, the applicant has been unable to raise the invoice and collect the revised amount. That in a recent communication dated December 24, 2023, the tenant expressed willingness to remit the revised rental value inclusive of GST, contingent upon the provision of successive Advance Ruling orders affirming Metropolitan Transport Corporation's stance that such rent is indeed taxable under Goods and Services Tax Laws. Hence, the applicant is before this authority seeking advance ruling on the said issue.

6.6. We find in the instant case that the applicant has rented out the premises owned by them to RTO (Chennai) and as per the lease agreement the rents were to be revised once every three years based on existing Government orders, starting from 1.09.2005. Hence, the subject period for which the revision in rent is taking place is 01.09.2005 to 31.08.2022. The relevant portion of the Lease agreement made between the applicant and their tenant i.e RTO, Chennai on 25.03.2007 is reproduced below for ease of reference;

" Whereas the LESSOR who is the owner of the premises mentioned in schedule below agrees to let out and the LESSEE agrees to take on lease the above said premises at a monthly rent of Rs. 1,00,000/- (Rupees One Lakh Only) is hereby agreed to pay rent on or before 15th of succeeding month.

The LESSEE has entered upon the said premises on 1.09.2002 and is continuing to occupy the premises and paying the monthly rent regularly without any interruption.

*The LESSEE requested the LESSOR to continue to letout the said premises for a further period of three years from 1.9.2005. The Lessor also agreed to letout the said premises to the Lessee at a monthly rent at Rs. 1.00 Lakh till such time the monthly rent is revised from 1.9.2005. **The lessee also agrees for revision of rent once in 3 years as per the existing orders of Government for the payment of difference in rent arising out of such revision from 1.9.2005.**"*

6.7. We find that there is no ambiguity in the applicability of GST on the differential rent amount due to upward revision of rent for the period from 01.07.2017 to 31.08.2022 and the applicant is before us with the query as to whether the collection of increased rents for the renting of immovable property services provided by the applicant during the period from 01.09.2005 to 30.06.2017 shall be considered as the term "supply" and the same is exigible to GST.

6.8 GST is a significant reform in the field of indirect taxes in our country. Multiple taxes levied and collected by the Center and States have been replaced by one tax called Goods and Services Tax (GST). As GST sought to consolidate multiple taxes into one it was very essential to have transitional provisions to ensure that the transition to the GST regime is very smooth and hassle free and no ITC (input tax credit) / benefits earned in the existing regime are lost. We find that the makers of the GST law have incorporated provisions foreseeing the issues which may arise post transition into GST era. One such provision relevant to the issue on hand is provided under Section 142(2)(a) of the CGST Act, 2017, the same is reproduced below;

Section 142. Miscellaneous transitional provisions.-
(1)

(2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

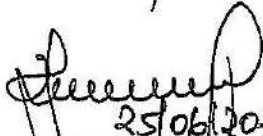
6.9. In view of the above provisions, we find that in case of upward price revision, a registered person will issue a supplementary invoice or debit notes within 30 days from the date of revision and such revision shall be treated as supply under GST Act and tax is payable under this Act. In the instant case we find that the applicant had

entered into contract for provision of renting of immovable property services as seen from the lease agreement submitted by the applicant and now intends to revise the price upwards and issue supplementary invoices for the said supply for the upward revision of rent. Hence, in the instant case collection of increased rents for the past period i.e. 01.09.2005 to 30.06.2017 shall also be treated as "supply" under Goods and Services Tax and the entire increased rent amount of Rs.1,60,42,203/-, as submitted by the applicant for the period from 01.09.2005 to 31.08.2022, shall be liable to Goods and Services Tax.


7. In view of the above, we rule as under,

RULING

1. Yes, the collection of increased rents for the past period shall be treated as "supply" under the CGST / TNGST Acts, 2017.
2. Yes, the entire increased rent amount of Rs. 1,60,42,203/-, as submitted by the applicant for the period from 01.09.2005 to 31.08.2022, shall be liable to GST, under the CGST / TNGST Acts, 2017.


25/06/2024
(A Valli)
Member(SGST)




(D. Jayapriya)
Member (CGST) 25/06/2024

To

M/s Metropolitan Transport Corporation,
No. 2, Pallavan House, Pallavan Salai, Chennai,
Tamil Nadu – 600002

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
3. The Pr. Commissioner of GST & C.Ex.,
Chennai North Commissionerate.

Copy to:

1. The Assistant Commissioner,
Egmore Assessment Circle,
Chennai – 600 031.
2. Master File / spare – 1.