M/s. Sanghvi Movers Limited (GSTIN 33AACCS3775K1Z4), Chennai branch office, Tamil Nadu

Authority for Advance Ruling — Tamil Nadu

ORDER No.26/AAR/2019 Dated **21.06.2019**

Q Questions Before the Authority

- Whether, since IGST is payable on the inter-state movement of cranes by the supplier (SML Maharashtra), the recipient office of SML in Tamil Nadu, duly registered under GST and receiving such cranes for further supply on hire charges, would be eligible to avail input tax credit (ITC) of the IGST charged.

F Facts

Sanghvi Movers Limited, Pune (SML Maharashtra, the head office), owns a fleet of cranes and supplies them on hire to its Chennai branch (SML Tamil Nadu, the applicant) under an MoU dated 01.07.2017. The applicant raises internal work orders on the head office, sub-hires the cranes to end customers, and receives monthly invoices with IGST charged on about 90% of the underlying billing. Under the MoU, the lease or hire charges are netted off against upkeep charges payable by the head office to the applicant and treated as deemed payment.

H Ruling

Eligibility of the Tamil Nadu branch to ITC of IGST charged by SML Maharashtra on hire of cranes for further supply	****Not eligible for full ITC**; eligible only to the extent of the restrictions under the second proviso to s.16(2) CGST Act and Rule 37 CGST Rules, read with s.20(iv) IGST Act**	Subject to fulfilment of all other conditions under s.16 CGST Act, read with s.20(iv) IGST Act. The ruling binds only the applicant.

The authority held that the applicant is not eligible for the full ITC on the IGST charged by SML Maharashtra. Eligibility is limited to the extent of the restrictions in the **second proviso to Section 16(2) of the CGST Act and Rule 37 of the CGST Rules** , read with Section 20(iv) of the IGST Act. The netting-off arrangement does not amount to non-consideration, so the deemed-payment treatment for supplies made without consideration does not apply.

R Reasoning

The authority found that the applicant and SML Maharashtra are distinct persons under s.25(4) of the CGST Act, since each holds a separate registration. The applicant is not paying the full consideration to the head office, because the amount is netted off against upkeep charges payable to the applicant. The authority held that this is not a supply made without consideration under Schedule I, so the proviso to Rule 37 (deemed payment) cannot

apply. Under the second proviso to s.16(2), the applicant must therefore reverse ITC on unpaid amounts beyond 180 days. Section 20(iv) of the IGST Act applies these CGST ITC provisions mutatis mutandis to the IGST paid on the inter-state supply.

P Provisions Relied On

- Section 16(1) CGST Act
- Section 16(2)(a) to (d) CGST Act, including the second proviso to Section 16(2)
- Section 25(4) CGST Act
- Schedule I, CGST Act (supplies without consideration)
- Rule 37 CGST Rules
- Section 20(iv) IGST Act

! For the Practitioner

This order is useful for branch-to-head-office hire arrangements where the invoice value is settled by book adjustment, because it shows the authority will look at whether real consideration is payable and will not treat netting off as deemed payment. A practitioner should note that the 180-day reversal under the second proviso to s.16(2) and Rule 37 is the operative restriction here. The order does not decide whether IGST is payable on the inter-state movement of cranes, and it does not bind other taxpayers, including SML Maharashtra.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> tn-26-aar-2019-sanghvi_movers.pdf

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