SST Sustainable Transport Solutions India Private Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-68/2018-19/B-129, Mumbai, dated 15/10/2018 (the date read… Dated **15.10.2018**

Q Questions Before the Authority

- Under which Chapter Heading or Service Code will the applicant's activity of providing AC Green Buses with drivers, fuel and maintenance to Nagpur Municipal Corporation classify?

F Facts

Nagpur Municipal Corporation (NMC) entered into a Service Provider Agreement dated 18 August 2017 with the applicant for operation and maintenance of AC Green Buses running on bio-ethanol fuel. The applicant supplies the buses with drivers, fuel, repairs and maintenance, and NMC fixes the routes and fares, collects the fares from passengers, and pays the applicant on the basis of effective run kilometres. The agreement runs for 15 years from the commercial operations date and includes a guaranteed minimum of 68,000 km per bus per year with an annual assured payment. NMC had obtained a clarification that transport of passengers by stage carriage other than air-conditioned attracts nil GST, and it refused to pay GST on the hire charges on that basis.

H Ruling

Chapter heading or service code for the applicant's activity of providing AC Green Buses with drivers, fuel and maintenance to NMC	**Supply of services under Sl. No. 10(ii), Heading 9966 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017**	Rental services of transport vehicles with operators, other than the category in Sl. No. 10(i). Order's observations apply 9% CGST and 9% SGST on the remuneration.

The activity is a supply of services, namely transfer of the right to use goods (the buses) for a specified period for consideration, which is deemed supply under sub-clause (f) of clause 5 of Schedule II. The supply is classifiable under Sl. No. 10(ii) of Notification 11/2017-Central Tax (Rate), heading 9966, as rental services of transport vehicles with operators, attracting CGST and SGST at 9% each. The authority did not accept that the nil-rate entry for stage carriages applies, because the applicant's transaction with NMC is a hiring of buses and not a transport of passengers by the applicant.

R Reasoning

The authority treated the arrangement as a transfer of the right to use goods for a specified period of 15 years for cash or other valuable consideration, which is deemed supply of services under sub-clause (f) of clause 5 of Schedule II to the CGST and MGST Acts. It relied on the agreement's terms, including NMC's control of routes and fares, the kilometre-based payment, the guaranteed kilometres and the annual assured payment. It drew on case law on transfer of the right to use buses, namely Tripura Bus Syndicate, Godavari Finance, G.S. Lamba and Rajasthan State Road Transport Corporation, and treated the kilometre-based amounts as hiring charges. It held

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

that NMC is not a state transport undertaking and that the nil-rate entries for passenger transport did not cover the applicant's supply to NMC.

P Provisions Relied On

- Section 97 and Section 98 of the CGST Act, 2017 and the MGST Act, 2017
- Sub-clause (f) of clause 5 of Schedule II to the CGST Act and MGST Act (transfer of the right to use any goods)
- Sl. No. 10(ii) and Sl. No. 10(i) of Notification 11/2017-Central Tax (Rate) dated 28.06.2017, heading 9966
- Sl. No. 10(ii) of Notification 11/2017-State Tax (Rate) dated 29.06.2017 (noted as parallel entry)
- Sl. No. 15(c) of Notification 12/2017-State Tax (Rate) dated 29.06.2017 (nil rate for stage carriage other than air-conditioned),…
- Sl. No. 22(a) of Notification 12/2017-State Tax (Rate) dated 29.06.2017 (hiring to state transport undertaking), considered an…

! For the Practitioner

A practitioner advising on bus or vehicle supplies with operators to a municipal body can use this order to support classification under heading 9966 at 9% CGST and 9% SGST, where the operator controls the buses and the municipal body controls routes and fares. The order settles that a kilometre-based bus hire with drivers, fuel and maintenance is a deemed supply of services and not a nil-rated passenger transport service. It does not decide the rate for a motor-cab rental where fuel is included under Sl. No. 10(i), which the order reproduces but does not analyse, and it is not binding on other authorities. The order is subject to appeal before the Maharashtra Appellate Authority for Advance Ruling.

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 -> ara_order_68_2018_maharashtra_sustainable_trans.pdf

Prepared 26-10-2026.

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