

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.**

**(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

**BEFORE THE BENCH OF**

**(1) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)**

**(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)**

GSTIN Number, if any/ User-id	27AAACT272701ZW
Legal Name of Applicant	M/s. Tata Motors Limited
Registered Address/Address provided while obtaining user id	Tata Motors Limited, Nigadi Bhosari Road, Pimpri, Haveli, Pune411018
Details of application	GST-ARA, Application No. 23 Dated 07.06.2019
Concerned officer	Division – II(PIMPARI) Commissionerate -Pune- I
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing
B Description (in brief)	<ul style="list-style-type: none"><li>•The Applicant is in the business of manufacturing commercial and passenger vehicles.</li><li>•The Applicant has engaged service provider to provide transportation facilities to its employees in non-air conditioned bus for commuting to/from workplace.</li><li>•As per Section 17(5)(b)(i) of Central Goods &amp; Service Tax Act, 2017 ITC of GST paid on hiring of motor vehicle having seating capacity of up to 13 person is blocked for ITC.</li><li>•In lieu of transportation facilities provided to employees, applicant is recovering some nominal amount from them.</li></ul>
Issue/s on which advance ruling required	(ii) applicability of notification issued under the provisions of the Act (iv) admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



## PROCEEDINGS

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively ] by **M/s. Tata Motors Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- 1. Whether input tax credit (ITC) available to Applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace?**
- 2. Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of employee bus transportation facility in non-air conditioned bus?**
- 3. If ITC is available as per question no. (1) Above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

### FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant are as follows:-

Applicant has engaged service providers to provide transportation facility to its employees, in non-air conditioned buses having seating capacity of more than 13 person. Sr. No. 15(b) of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 exempts service provided for *"transport of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire"*. Service providers are having contract carriage permit issued by the relevant regulatory authorities in respect of buses deployed for employee transportation service.

- 2.2 Section 17(5)(b)(i) of the CGST Act, 2017 has been amended, w.e.f. 01.02.2019, to block ITC on leasing, renting or hiring of motor vehicles having approved seating capacity of not more than 13 persons. Hence ITC is allowed on leasing, renting or hiring of motor vehicles having seating capacity of more than 13 person.
- 2.3 To ensure use of transportation facility only by authorized persons/employees, Applicant is issuing pass to employees and nominal amount is recovered on monthly basis. In other words, difference between amount paid to service provider and amount recovered from employees is cost to company as salary cost.
- 2.4 By Press release dated 10.07.2017, it was clarified that supply by employer to the employees in terms of contractual agreement of employment entered into between employer and employee (which are treated as a part of salary/cost to company), will not be subject to GST and expenditure on employee bus transportation service borne by Applicant are part and parcel of cost to company. The employee transportation facility is open to all the employees desirous of availing the facility.
- 2.5 The applicant has submitted that, in similar transactions carried out in pre-GST regime, it was held by various courts that credit is not admissible to manufacturer on part of cost borne by worker and thus ITC will be restricted to the extent of cost borne by the employer.
- 2.6 Section 17(5)(b)(i) of the CGST Act as amended w.e.f. 01.02.2019, *inter-alia* specifies the supply of goods and service which is blocked for credit. Relevant abstract of the same is reproduced as under:
- "food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicle vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purpose specified therein, life insurance & health insurance."*
- Clause (a) of Section 17(5) of CGST Act restricts ITC on 'motor vehicles for transportation of persons having approved seating capacity of not more than thirteen person (including driver), except when used for specified purpose.
- 2.7 From the reading of Clause (a) & Clause (b) of Section 17(5) of the CGST Act, it is clear that, leasing, renting or hiring of motor vehicle having approved seating capacity of more than thirteen person is admissible for ITC. Hence Applicant would be entitled to avail ITC in the subject case.

2.9 As per para 2(t) of the exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, "contract carriage" has the same meaning as assigned to it in clause (7) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988) wherein ***"contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum***

- (a) On a time basis, whether or not with reference to any route or distance, or  
(b) from one point to another;***

***And in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey,***

***And includes***

- (i) a Maxicab; and  
(ii) a motor cab notwithstanding that separate fares are charged for its passengers"***

2.11 Thus, in order to take benefit of Sl. 15(b) of the exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. a) Service is provided for transportation of passengers; b) By a non-air-conditioned contract carriage c) The vehicle should have a contract carriage permit under the Motor Vehicle Act; d) Requirements under Section 2(7) of the Motor Vehicles Act should be fulfilled and e) The transportation should not be for the purpose of tourism, conducted tours, charter or hire; and f) It should not be a radio taxi

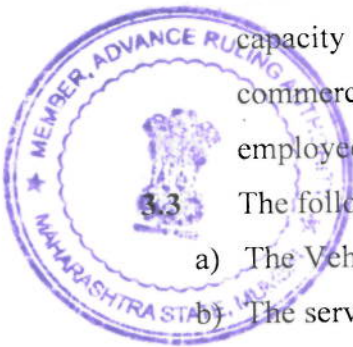
2.12 In subject case even though Applicant recovers nominal amount from its employees, it cannot be said that particular employee has obtained the bus on hire or charter from the Applicants. It is the Applicant who would be eligible for the aforesaid exemption provided to transport of passengers in a non-air conditioned contract carriage.

2.13 Citing the Order passed by Hon'ble High court of Bombay in the case of CCE. Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (Bom) wherein it was held that, credit is not admissible to manufacturer on part of cost borne by worker and proportionate credit embedded in cost of food recovered from employees, needs to be reversed, Applicant has submitted that credit is not admissible to them on part of cost borne by worker and thus ITC will be restricted to the extent of cost borne by the Applicant (employer).

**03. CONTENTION – AS PER THE CONCERNED OFFICER:**

The comments of the jurisdictional officer are as under:-

- 3.1** Prior to its amendment made vide the Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) dated 29.08.2018 made effective from 01.02.2019 vide Notification No. 02/2019 – C.T., dated 29.01.2019, Section 17 (5) of the CGST Act, 2017, did not allow availment of input tax credit of the supply of goods or services as the same was allowed only to the supplier/provider under conditional circumstances and not to the service recipient like the applicants who are only recipient of the employee bus transportation service and not a provider.
- 3.2** After the abovementioned amendment, inference can be made that the applicant, being a recipient of bus transportation service for their employees from service providers deploying buses with seating capacity of more than thirteen persons are eligible for the ITC of the GST paid on the services of bus transportation received [as hirers of motor vehicles – highlighted in clause (b) (i) of Section 17 (5) of the CGST Act, 2017]. The earlier blanket restriction on availment of credits under Section 17(5) has been relaxed in case of large capacity motor vehicles (more than 13 persons carrying capacity) used mainly for commercial non-public transportation like used by industrial/commercial concerns for their employees and the applicant's case is similar.
- 3.3** The following requirements should be met for availment of input tax credit.
- a) The Vehicle has approved seating capacity of more than 13 persons (including driver).
  - b) The service of leasing, renting or hiring is used for furtherance of business as per Section 16(1) of the CGST Act, 2017.
  - c) The service provider furnishes invoice as per Section 31 and Rule 46 of the CGST Act & the CGST Rules, respectively.
  - d) All other conditions as prescribed under Section 16(2) are complied.
- 3.4** The jurisdictional officer has cited various judicial decisions along with the decision made by the Hon'ble Court in *Commr. of C. Ex., Chandigarh-II v. Federal Mogul Goetze (India) Ltd.*, 2015 (39) S.T.R. 735 (P&H), as well as the Karnataka High Court decision in *Commr. of C. Ex., Bangalore-III v. StanzenToyotetsu India (P) Ltd.*, 2011 (23) S.T.R. 444 (Kar.) and submitted that input tax credit is available to the applicant in the instant case.



3.7 In subject case of transaction between Applicant and its employees, where Applicant recovers nominal amount from its employees, it cannot be said that particular employee has obtained the bus on hire or charter from the Applicants. The applicant's contentions that they are eligible for exemption from GST under Sl. No. 15(b) of Notification. No. 12/2017-Central Tax (Rate) dated 28.06.2017 in respect of nominal amounts of recoveries made by the applicant (as employer) from their employees towards bus transportation service, is not correct for the following reasons:

(a) The transaction between the applicant & their employees due to "Employer-Employee" relation does not amount to supply of either goods or services and therefore GST cannot be applied on the same. In view of Schedule-III to CGST Act 2017, **Services by an employee to the employer** in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.

(b) The applicant is not acting as a provider of bus transportation service to their employees but as recipient of such service provided by the bus transporters and the employees are users of the said receipted service. The restriction or allowance of credit in clause (b) of Section 17(5) is in relation to the motor vehicles of not more than 13 passenger capacity and the applicant uses motor vehicles (Buses) of higher capacities. Hence GST is **not applicable** on nominal amounts recovered by Applicants from their employees for usage of employee bus transportation facility in non-air conditioned bus.

3.8 On the question whether ITC, if allowable will be restricted to the extent of cost borne by the Applicant (employer), the jurisdictional officer citing the decision of Hon'ble High court of Bombay in the case of CCE, Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (Bom) submitted that, in view of settled position of law in pre-GST regime in similar set of transaction, credit is not admissible to Applicants on part of cost borne by the employees of the applicants and the ITC will be restricted to the extent of cost borne by the Applicant (employer).

#### 04. HEARING

4.1 Preliminary hearing in the matter was held on 26.11.2019. Shri Rajesh Shukla, Head, Indirect Tax, appeared along with Shri Mukesh Dokania, Dy. General Manager (Indirect

Taxation) and requested for admission of their application. Jurisdictional Officer was not present.

- 4.2 The application was admitted and called for final hearing on 17.12.2019. Shri Rajesh Shukla, Head, Indirect Tax, appeared along with Shri Mukesh Dokania, Dy. General Manager (Indirect Taxation). Authorized Representative, made oral and written submissions. Jurisdictional Officer was not present but made written submissions. We heard both the sides.

## **05. DISCUSSIONS AND FINDINGS:**

- 5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

- 5.2 Applicant had submitted that they have engaged a service provider to provide bus transportation facility to its employees in non-air conditioned bus having seating capacity of more than 13 person. The first question raised by them is whether they are entitled to avail ITC of the GST paid to such service providers.

- 5.2.1 To answer the question whether applicant is entitled to avail Input tax credit (ITC) of GST charged on such inward supply as in the subject case, we refer to the provisions of Chapter V of the CGST Act, 2017 comprising of Sections 16 to 21.

- 5.2.2 Section 16 of the CGST Act, 2017, contains provisions with respect to eligibility and conditions for taking ITC. As per Section 16 (1), every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Hence, ITC in respect of receipt of services is available and can be taken. However, the credit is available subject to such conditions and restrictions and in the manner specified in Section 49 of the CGST Act.

- 5.2.3 We have no doubt that in the subject case, the supply of services received by the applicant is used in the course or furtherance of their business and therefore prima facie, they are eligible to take credit of GST charged by their suppliers.

5.2.4 However, while we find that the applicant is eligible to take ITC under the provisions of the CGST Act, it is to be seen whether Section 17 (5) of the said Act debars the applicant from taking credit. We find that, as rightly pointed out by the jurisdictional officer, Section 17 (5) has been amended by CGST (Amendment) Act, 2018 (No. 31 of 2018) dated 29.08.2018 made effective from 01.02.2019 vide Notification No. 02/2019 – C.T.- 2019 dated 29.01.2019. Prior to this date Section 17 of CGST Act, 2017 read as under:-

**Section 17: (5)** *Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

(a) *motor vehicles and other conveyances except when they are used*

(i) *for making the following taxable supplies, namely:—*

(A) *further supply of such vehicles or conveyances ; or*

(B) *transportation of passengers; or*

(C) *imparting training on driving, flying, navigating such vehicles or conveyances;*

(ii) *for transportation of goods;*

(b) *the following supply of goods or services or both—*

(i) *food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*

(ii) *membership of a club, health and fitness centre;*

(iii) *rent-a-cab, life insurance and health insurance except where*

(A) *the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or*

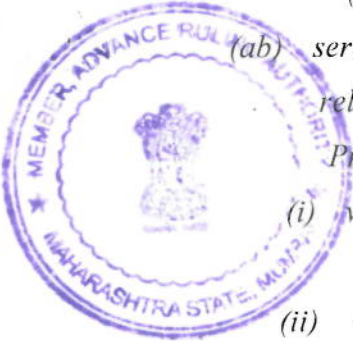
(B) *such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply.*

5.2.5 Vide the aforesaid amendment, Clauses (a) and (b) have been replaced with Clauses (a), (aa), (ab) and (b) and the amended Section 17 (5) (d) reads as under:-



**Section 17: (5)** Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

- (a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :—
- (A) further supply of such motor vehicles; or
  - (B) transportation of passengers; or
  - (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
- (i) for making the following taxable supplies, namely:—
    - (A) further supply of such vessels or aircraft; or
    - (B) transportation of passengers; or
    - (C) imparting training on navigating such vessels; or
    - (D) imparting training on flying such aircraft;
  - (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) :  
Provided that the input tax credit in respect of such services shall be available —
- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
  - (ii) where received by a taxable person engaged
    - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
    - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
- (b) the following supply of goods or services or both —
- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:



Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (i) membership of a club, health and fitness centre; and
- (ii) (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”*

5.2.6 From the above, it is clear and apparent that Section 17 (5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.12.2019. However with effect from 01.12.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver).

5.2.7 Therefore in the subject case, since the applicant has specifically submitted and as agreed by the jurisdictional officer, that they are using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), the applicant shall be eligible for Input Tax Credit in this case. However we would like to make it very clear that if the motor vehicle hired by them does not have an approved seating capacity of more than thirteen persons (including the driver), then in that case the applicant will not be eligible for Input Tax Credit.

5.3 The second question raised by the applicant is whether GST is applicable on nominal amount recovered by Applicants from their employees for usage of employee bus transportation facility in non-air conditioned bus.

5.3.1 Applicant has submitted that they issue pass only to their employees, so that the transportation facility can be used by such employees, for which nominal amount is recovered on monthly basis. They have also submitted that once, employee ceases to be in employment with Applicant, he/she is not authorized to use the transportation facility. In other words, employer-employee relationship is must to avail this facility.

5.3.2 In the subject case we find that the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services in the instant case. The applicant's contentions that they are eligible for exemption from GST under Sl. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 in respect of nominal amounts of recoveries made from their employees towards bus transportation service, is not correct. The exemption under the said notification is available only when the supply is taxable in the first place. In the subject case, the transaction between the applicant & their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act.

5.3.3 To answer the second question we now refer to Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services. As per clause 1 of the said Schedule-III, *Services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.*

5.3.4 Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion that GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case.

5.4 The last question raised by the applicant is if ITC is available to them, whether it will be restricted to the extent of cost borne by the Applicant.

5.4.1 The applicant, citing the decision of the Hon'ble High court of Bombay in the case of CCE. Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (Bom) has submitted that ITC is not admissible to Applicant on part of cost borne by employee and thus ITC will be restricted to the extent of cost borne by the Applicant.

5.4.2 The jurisdictional officer has also endorsed the view of the applicant and we have no reason to deviate from the view expressed by both, the applicant as well as the jurisdictional officer

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

**ORDER**

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 23/2019-20/B-

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Mumbai, dt.

28/08/2020

For reasons as discussed in the body of the order, the questions are answered thus –

**Question: -1. Whether input tax credit (ITC) is available to Applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace?**

**Answer: - ITC is available to the applicant but only after 01.02.2019.**

**Question:-2. Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of employee bus transportation facility in non-air conditioned bus?**

**Answer: - Answered in the negative.**

**Question: -3. If ITC is available as per question no. (1) above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?**

**Answer: - Answered in the affirmative.**



-sd-  
**A. A. CHAHURE**  
(MEMBER)

-sd-  
**P. VINITHA SEKHAR**  
(MEMBER)

**CERTIFIED TRUE COPY**

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint-Commissioner of State Tax, Mahavikas for Website.

  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

**Note :-** An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai – 400021.