

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Thiru Senthilvelavan B., I.R.S Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34

2. Tmt. T.Padmavathi., Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 26 /AAR/2021 DATED: 30.07.2021

GSTIN Number, if any / User id		33AAACI1439E1Z4
Legal Name of Applicant		M/s. India Pistons Limited
Registered Address/Address provided while obtaining user id	Huzur Gardens, Sembiam Chennai 600 011	
Details of Application		ARA-01 No. 14/2021 dated 22.04.2021
Concerned Officer		Center: North Commissionerate State: Assistant Commissioner(ST) Villivakkam Assessment Circle,
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Manufacturing
B	Description (in Brief)	
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		1. As to whether GST is payable on the

is required	<p>transfer of leasehold rights in respect of the consideration of Rs. 15 Crores received by them from M/s. INOX Air products Private Limited for the land allotted by SIPCOT?</p> <p>2. Whether the Subsequent transfer of SIPCOTs allotted land from the Applicant to M/s. Inox Air Products Private Limited would fall within the ambit of 'Supply' as defined under Section 7 of the Goods and Services Act 2017?</p>
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. India Pistons Limited, Huzur Gardens, Sembiam, Chennai (hereinafter called the Applicant) are registered under GST with GSTIN 33AAACI1439E1Z4. The applicant has sought Advance Ruling on:

1. As to whether GST is payable on the transfer of leasehold rights in respect of the consideration of Rs. 15 Crores received by them from M/s. INOX Air products Private Limited for the land allotted by SIPCOT?
2. Whether the Subsequent transfer of SIPCOTs allotted land from the Applicant to M/s. Inox Air Products Private Limited would fall within the ambit of 'Supply' as defined under Section 7 of the Goods and Services Act 2017?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan 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.

2.1 The applicant has stated that they are engaged in manufacturing of goods and was allotted land measuring to an extent of 15.34 acres by the State Industrial Promotion Corporation of Tamilnadu (hereinafter referred as SIPCOT). SIPCOT had allotted land measuring 19.04 acres vide lease deed dated 07.07.1993 vide Document No. 3002 of 1993. Thereafter SIPCOT had further allotted land measuring 1.30 acres vide lease deed dated 14.12.1994 vide Document No. 6460 of 1994. Subsequent to the above allotment, there were certain lands allotted to them and remained un-utilized. In view of Covid-19 pandemic, the Government of Tamilnadu entered into a MOU with M/s. INOX Air Products Private Limited(hereinafter referred to as INOX) for setting up of a state of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant. INOX had approached them for transfer of the un-utilized portion of the allocated land by SIPCOT and they, vide MOU dated 20.11.2020 had transferred the leasehold rights in respect of the un-utilized portion of land subject to approval by SIPCOT. As per this MOU, they agreed to transfer the property admeasuring 5 acres to INOX for Rs. 15 Crores for the leasehold rights and Rs. 24 lakhs for superstructures. Subsequently, SIPCOT accorded approval for the transfer of balance period of lease hold rights concerning Plot No. 76 pt. (S) measuring 5.00 acres of land along with existing shed/super structures, out of 15.34 acres at SIPCOT Industrial Complex, Hosur Phase-II from them to INOX.

2.2 On the interpretation of law, they have stated that transfer of allotment is at the approval of SIPCOT and there is no Service Provider or supplier and receiver or recipient of service relationship as there is no voluntary agreement made between them and INOX for whom the portion of allotment was surrendered.; The transfer of leasehold rights was permitted with certain conditions by SIPCOT and it cannot be said that the transaction of such transfer is a supply of service by them attracting GST.; As for a supply to be taxed there must be an agreement to supply where the terms and conditions for such supply or for the receipt of such supply can be set-out only by the supplier or the recipient respectively.; In this case the transfer of leasehold rights is effected on the basis of the conditions imposed by SIPCOT and subject to the approval by SIPCOT, the third party. They have further stated that the compensation received under the said MOU will not fall within the definition of "Consideration" as defined under Section 2(31) of the CGST Act 2017. They have submitted that the definition of "Consideration" as defined under Section 2(31) of the CGST Act, 2017 read with Section 2(d) of the Indian Contract Act,1872

states that when at the desire of the promisor, promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence, or promise is called a consideration for the promise. That in the instant case although the transfer of allotment is agreed to be made, the same is contingent on the approval, acceptance and subject to such terms and conditions that may be imposed by the SIPCOT. Further, they have stated that the second stem of submissions relates to Schedule-II to the CGST Act 2017.; that the said transfer of leasehold rights are effected only at the approval of the SIPCOT, being subjected to certain conditions imposed by them, it cannot be said that there is an obligation to do an act as per the agreement entered into prior to such approval.; Section 7 of the CGST Act 2017 dealing with 'Supply' does not contemplate agreeing to do an act between supplier and receiver at the approval of a third party, subject to such conditions as imposed by such third party and the said situation is not inbuilt in the provisions relating to supply which is taxable.

3. Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 16.07.2021 virtually. The Authorised representative Shri. Muthu Venkatraman, Advocate appeared for the hearing. He reiterated the submissions made in their application. He submitted that the transaction is effected only at the approval of SIPCOT and is subject to certain conditions imposed by SIPCOT and hence it cannot be said that there is an obligation to do an act as per the agreement entered into prior to such approval by SIPCOT as Section 7 does not contemplate agreeing to do an act between the supplier and receiver at the approval of a third party subject to certain conditions imposed by such third party and the said situation is not inbuilt in the provisions relating to supply which is taxable. He also submitted that the MOU entered into between M/s. IPL & M/s. INOX is the only agreement.

4. The applicant is under the administrative control of the Central Jurisdiction. The central jurisdictional authority vide their letter F.No. GEXCOM/TECH/MISC/1304/2021-TECH-O/O Pr. Commr-CGST-Chennai(N) dated 04.06.2021 has submitted that there are no proceedings pending in the case of the applicant.

5. The State jurisdictional authority has not furnished any comments and it is construed that there are no proceedings pending on the issue raised by the applicant.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral submissions made at the time of Virtual hearing and the comments of the Jurisdictional Authority. The applicant has been allotted land at the Industrial estate, Hosur by SIPCOT and was holding lease hold in respect of land measuring 15.34 acres of the initial allotment to them. INOX with a proposal to set up a state of art Ultra High Purity Cryogenic Liquid and Medical and Industrial Oxygen Plant had approached them for transferring the un-utilised portion of land measuring 5.00 acres held by them for a sum of Rs. 15 Crores. The ruling sought is on the following questions:

1. As to whether GST is payable on the transfer of leasehold rights in respect of the consideration of Rs. 15 Crores received by them from M/s. INOX Air products Private Limited for the land allotted by SIPCOT?
2. Whether the Subsequent transfer of SIPCOTs allotted land from the Applicant to M/s. Inox Air Products Private Limited would fall within the ambit of 'Supply' as defined under Section 7 of the Goods and Services Act 2017?

The questions raised as above requires ruling as to whether the activity undertaken by them is a 'Supply' under GST and whether tax is payable on the 'Consideration' received. The questions raised are within the ambit of this authority as per Section 95/97(2) of GST Act and therefore the application is admitted.

7.1 From the facts of the case as available before us, it is seen that IPL was allotted and were holding lease of 15.34 acres of land in the SIPCOT Industrial Complex at Hosur(phase-II). The Original lease was entered into for a period of 99 years and the lease was entered into vide lease deed dt. 07.07.1993. INOX had approached them to transfer un-utilized portion of the allocated land to the extent of 5.00 acres for setting up a state of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant. A Memorandum of Understanding (MOU) has been entered into between the applicant and INOX on 20.11.2020 for transfer of leasehold rights for the remaining period of lease from IPL to INOX subject to the approval of SIPCOT in respect of the land measuring 5.00 acres. The contention of the applicant is that

- there is no service provider and receiver relationship between themselves and INOX as the transfer of allotment is at the approval of SIPCOT;
- for a supply to be taxed there must be an agreement to supply, where the terms and conditions for such supply or for the receipt of such supply can be set-out only by the supplier or the recipient, whereas in the case at hand the transfer is effected on the basis of conditions effected by SIPCOT
- Compensation received do not fall within the definition of "Consideration"
- Transfer of leasehold rights being subjected to certain conditions and approval of SIPCOT, cannot be said that there is an obligation to do an act and therefore has claimed that the transaction is not a 'Supply' under GST.

7.2 In the case at hand, it is seen that IPL had been allocated a certain land originally by SIPCOT for lease of 99 years. IPL had taken possession of the land for the purposes meant for allotment. From the Memorandum of lease deed dated 22nd July 1993 between SIPCOT(Party of First Part) and the applicant (Party of Second Part), the following are observed:

- Clause 31 of the said Lease Deed states as follows:

31. The party of the second part shall not directly or indirectly transfer, assign, sell, encumber or part with its interest, either in part or in whole, in any manner whatsoever without the previous approval of the party of the First Part in writing. It shall be open to the Party of the First Part to grant or refuse approval or to impose any conditions it considers necessary.
- Clause 34 of the said Leese Deed states as follows:

34. The party of the Second part shall not sub-let or transfer or in any other manner permit the occupation of any other person of the whole or part of the plot.

The above clauses are seen as clause 30 and 33 in the Memorandum of lease deed dated 30th December 1994 entered into between SIPCOT and the applicant. It is seen that SIPCOT is the Owner of the Land and SIPCOT had given on lease the marked land to the applicant for a period of 99 years. The applicant while entitled to use the land for the purposes agreed upon, i.e., setting up manufacturing facility, is restrained to sub-let or transfer or permit occupation of any other person in the land allotted to them. However, the applicant can part with its interest in the leasehold held by them with the approval of SIPCOT, who may or may not grant the request with or without any further conditions.

7.3 The applicant has stated to have entered into a Memorandum of Understanding with INOX dated 20.11.2020. From the said MOU, the following are seen:

- MOU is executed to formalize the terms agreed between them for transfer of the remainder of the leasehold rights in the Schedule property by IPL in favour of INOX, subject to approvals being granted by SIPCOT
- IPL agrees to transfer the remainder of its leasehold rights for a consideration of Rs. 15 Crores for lease hold rights determined at the rate of Rs.3 Crore per Acre
- IPL to sign and submit the application to SIPCOT for transfer of leasehold rights in favour of INOX
- INOX to make necessary application to SIPCOT to obtain the necessary approval letter from SIPCOT
- On receipt of approval letter from SIPCOT, INOX to pay the differential land cost and processing fees to SIPCOT
- Modified lease deed to be executed and post registration and on receipt of the payment of consideration agreed upon, IPL will hand over the vacant possession of the Schedule property to INOX

7.4 The applicant has furnished the approval letter of SIPCOT dated 28.12.2020, wherein SIPCOT has permitted transfer of balance period of leasehold rights to INOX for the intended purpose of setting up the oxygen plant, with the conditions that the processing fee to be paid by INOX, modified lease deed to be executed by INOX and IPL , etc..

7.5 From the above facts of the case, it is evident that SIPCOT who owns the land has leased the allocated land to IPL for a period of 99 years. IPL by virtue of the lease conditions, do not possess the right to sub-let any part or whole of the property leased to them. However, IPL may transfer the leasehold rights to any other person with the approval of SIPCOT, who may or may not grant such approval. Thus, it is clear that the applicant holds the leasehold rights which he may agree to transfer to any other person but the applicant cannot per-se transfer the leasehold rights to such person. The only option that exists for the applicant is to request SIPCOT to approve such an agreement entered into by the applicant with the other person and request SIPCOT to approve and execute the modified deed of lease for the remaining period. Accordingly, in the case at hand, IPL had agreed to

transfer the leasehold rights held by them in respect of the land required by INOX to their favour for a consideration and requested SIPCOT to approve the same. SIPCOT has approved the request and stipulated the payment of differential cost of land & processing fees by INOX and thereupon to execute the modified lease deed by both IPL and INOX for their respective leaseholds.

7.6 Supply under the GST Act is defined under Section 7 of CGST/TNGST Act and it states as under:

7. (1) for the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.;

The definition is an 'inclusive' definition. An activity to be considered as a 'Supply' should satisfy the following:

- all forms such as sale, transfer, etc are supply
- such supply should be for a consideration
- and made by a person in the course or furtherance of business.

'business' for the purposes of GST is defined under 2 (17) of the act as:

(17) –business includes —

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

The definition of 'business' is also an inclusive definition and as per 2(17)(d) above, services in connection with commencement of business is defined as 'business'.

From the above statutory provisions, it is evident that an activity in any form effected for a consideration and made in the furtherance of business is a 'Supply'.

7.7 In the case at hand, IPL vide the MOU has agreed to partwith their interests in the leasehold rights held by them, on the land required by INOX; Since as per the lease deed executed between SIPCOT and IPL, IPL can partwith their interests in the land leased to them only with the approval of SIPCOT, IPL has sought the approval of SIPCOT. If the approval had been denied by SIPCOT, then IPL would not be able to partwith their interests and the MOU entered into with INOX specifies that in such a condition, the advance extended by INOX to IPL against a bank guarantee of IPL will be returned to INOX. In the subject MOU, the conditions of supply are made exclusively only by IPL and INOX. As IPL can partwith their interests only with the approval of SIPCOT, the same is mentioned in the MOU and this in no way can be construed that the conditions of the supply stands dictated by a third party. Therefore, there is no merit in the contention of the applicant that there is no agreement/contract wherein conditions of supply are made by the supplier/recipient but by the third party, i.e., SIPCOT. Further, from the MOU which is the agreement entered into between IPL and INOX for the activity of agreeing to partwith the leasehold rights held by IPL in favour of INOX, it is seen that IPL assures to undertake certain activities and INOX acknowledges the same which clearly exhibits the relationship between IPL and INOX as a service provider and recipient. The compensation for parting with the interests is definitely a consideration for agreeing to partwith the interests held by IPL in the leasehold. The transaction is not a transfer of leasehold as IPL by the clauses of Lease deed executed with SIPCOT is not permitted to sub-lease. The activity of IPL as seen from the Memorandum of Understanding executed between IPL and INOX and the approval letter of SIPCOT, is only a transaction in which IPL agrees to partwith the leasehold interests it possess for the remaining lease period in favour of INOX with the approval of SIPCOT in respect of the land required by INOX. Therefore the activity is not transfer of leasehold rights by IPL to INOX but is an activity of agreeing to partwith the leasehold interests IPL hold on the land to be leased to INOX by SIPCOT. If it were a transfer of leasehold rights, there should be an agreement for such transfer between IPL and INOX. It is stated by IPL that apart from the Memorandum of Understanding, there is no agreement between IPL and INOX. The modified lease deed is also executed by IPL and INOX independently with SIPCOT and INOX is to pay the differential cost of lease rentals and processing

charges to SIPCOT, as seen from the approval letter of SIPCOT. The above, clearly establishes that the activity undertaken by IPL in agreeing to partwith the interests of the leasehold rights in the land required by INOX for furtherance of their business, against a consideration is an activity of 'agreeing to do an act', which is a taxable service classifiable under 'Other Miscellaneous Services', with SAC 9997.

8. In view of the above, we rule as under:

RULING

The activity of agreeing to partwith the leasehold interests held by the applicant in favour of M/s. INOX Air Products Private Limited is 'Supply' as defined under Section 7 of the Goods and Services Act 2017 and GST is liable to be paid on the consideration of Rs. 15 Crores received by them.

6/10/21
Tmt. T. Padmavathi
(Member SGST)

25/07/21
Shri B. Senthilvelavan
(Member CGST)

To
M/s. India Pistons Limited
Huzur Gardens, Sembiam
Chennai 600 011

30 2021
//By RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai North Commissionarate.
4. The Assistant Commissioner (ST),
Villivakkam Assessment Circle,
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100 Feet Road,
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5. Master File/ Spare-2