

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY,
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-600 006.**

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

Members present are:

1. Ms. Manasa Gangotri Kata, IRS, Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai- 34.
2. Thiru. KurinjiSelvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (ST) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No.26/AAR/2019 DATED 21 .06.2019

GSTIN Number, if any / User id		33AACCS3775K1Z4
Legal Name of Applicant		M/s. Sanghvi Movers Limited
Registered Address/Address provided while obtaining user id		121, Chembarambakkam, Chennai Bangalore Road, Poonamallee, Chennai, TamilNadu. 600 123.
Details of Application		GST ARA-01 Application Sl. No.04 dated : 22.01.2019
Concerned Officer		State -The Assistant Commissioner (ST), PoonamalleeAssessment Circle Centre : Chennai Outer Commissionerate Division: Poonamallee
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Manufacturer
B	Description (in Brief)	Sanghvi Movers Limited engaged in the business of providing medium-sized heavy-duty cranes on rental/lease/hire basis to customers without transferring the right to use the cranes.
Issue/s on which advance ruling required		Admissibility of credit of input tax paid or deemed to have been paid (IGST)
Question(s) on which advance ruling is required		Whether on facts and circumstances of the case, since Integrated Goods and Services Tax ("IGST") is payable on inter-state movement of cranes by the supplier (i.e. SML

	Maharashtra), whether the recipient office of SML (i.e. SML Tamil Nadu) duly registered under GST receiving such cranes for further supply on hire charges would be eligible to avail input tax credit (ITC) of IGST charged?
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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. Sanghvi Movers Limited 121, Chembarambakkam, Chennai-Bangalore Road, Poonamallee, Chennai, TamilNadu. 600 123 (hereinafter referred to as 'Applicant') is a branch office of Sanghvi Movers Limited (hereinafter referred to as SML), a public Limited Company engaged in the business of providing medium-sized heavy-duty cranes on rental/lease/hire basis to clients without transferring the right to use the cranes. SML have pan-India presence and cranes are deployed across India as per the requirements of customers. The applicant are registered under GST in the State of Tamilnadu with GSTIN 33AACCS3775K1Z4. The applicant has sought Advance Ruling on

Whether on facts and circumstances of the case, since Integrated Goods and Services Tax ("IGST") is payable on inter-state movement of cranes by the supplier (i.e. SML Maharashtra), whether the recipient office of SML (i.e. SML Tamil Nadu) duly registered under GST receiving such cranes for further supply on hire charges would be eligible to avail input tax credit (ITC) of IGST charged?

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 SML operate the cranes on wet Lease basis (own, operate and maintain) and provide entire operating crew, such as crane operators, riggers, helpers, technicians, engineers, etc., whenever a crane is given on rent. SML has a large fleet of more than 400 cranes ranging from 40 MT to 800 MT lifting capacity. All cranes have been imported from various countries such as USA, Germany, Japan, Singapore, China, etc. SML own two types of cranes viz., Crawler cranes and Tyre-mounted hydraulic cranes. The cost of these cranes is significantly high and their average economic life ranges from 25 to 35 years. These cranes are moved/transported on trailers, from one location to another, in knock down condition. As the movement of cranes involves significant time and cost, SML has set up various branches ("SML branch offices") across India at strategic locations including Tamil Nadu, to minimize transportation time and costs. Under GST, SML has obtained registration for 10 locations across India, including its head office ("SML Maharashtra") located in Pune, Maharashtra and branch office ("SML Tamil Nadu") located in Chennai, Tamil Nadu. SML have multiple offices across India from where they undertake business activities. At present, SML branch offices receive enquiries from various customers for supply of cranes on hire charges. SML branch offices negotiate with customers and receive final work orders from customers. The title and ownership of all the different types of cranes along with their components vest with SML Maharashtra. Therefore, on receipt of the final work order, all the SML branch offices in turn raise internal work orders on SML, Maharashtra to provide requisite cranes on hire charges along with appropriate support and assistance to various customers across India.

2.2 The applicant has stated that, with the introduction of GST all the branches of a single legal entity located in different States with same PAN are treated as distinct persons and any supply of taxable goods/services between distinct persons with or without consideration, is subject to applicable GST. Thus, under GST, inter-State branch transactions involving services have been brought under the ambit of tax. In order to comply with the provisions of GST law and ensure operational feasibility, SML Maharashtra has entered into a formal service arrangement with all SML branch offices (including SML TamilNadu) by entering into a Memorandum of Understanding (MoU), wherein SML Maharashtra has agreed to provide cranes and crane components to all SML branch offices on hire charges. As part of the service arrangement, whenever the applicant receives a

final work order from its customers for providing cranes on hire charges, they will in turn raise an internal work order on SML Maharashtra for providing the required cranes on hire charges. Thus, for each final work order received by the applicant from customers, an internal work order is raised by them on SML Maharashtra, wherein such class/type of crane, as required by customers, is provided on hire charges by SML Maharashtra to the applicant, who in turn sub-hires them to the ultimate customers. On receipt of internal work order from the applicant, SML Maharashtra transports the crane and its components to the customer's location /project location on the instructions of the applicant. For each type of crane given on hire charges, the crane operator maintains a separate monthly log sheet at the customer/project location, wherein daily and hourly details of crane usage and idle time are maintained, based on which the monthly service invoice is raised by the applicant on respective customers. Further, an invoice from SML Maharashtra is issued to the applicant and the value considered for levying GST is approximately 95% of the value charged to the customer by the applicant.

2.3 The applicant has also stated that as per section 12(2) of Integrated Goods and Services Tax Act, 2017 ("IGST Act), the place of supply of service of leasing/hire/renting of crane to a registered person shall be the location of such registered person. Therefore, in the said transaction, as the place of supply falls in Tamil Nadu, i.e., the location of applicant, SML Maharashtra discharges IGST on the value of hire charges recovered from the applicant treating the same as inter-state supply of service. Consequently, the recipient i.e. the applicant avails credit of IGST charged by SML Maharashtra on the value of hire charges charged on the invoice.

2.4 The applicant has made reference to the Clarification issued under Circular No. 21/21/2017-CGST dated 22.11.2017 read with Circular No. 1/1/2017-IGST dated 7th July 2017, wherein it has been clarified that only such movement of goods that would be further supplied by way of sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made would be treated as taxable supply and subject to GST and no GST will be levied in case such goods are moved for repairs and maintenance activity.

2.5 The applicant has submitted the order issued by the Maharashtra Authority for Advance Ruling vide Order No GST – ARA-43/2017-18/B-50 Mumbai dated 15 June, 2018. The ruling pronounced by the authority is that the movement of

tyre-mounted cranes or crawler from one GST registered office of SML to another registered office of SML for further supply on hire charges to customers would be treated as “taxable supply” under GST law as per Circular 21/21/2017- CGST read with Circular No.1/1/2017- IGST, and the Circular no 21/21/2017- CGST exempts from tax interstate movement of rigs, tools, spares and all goods on wheels (like cranes) where interstate movement of such goods is not for further supply of same goods is not applicable to the facts of the preset transaction. Further, SML Maharashtra also requested the Maharashtra Authority for Advance Ruling to confirm whether the recipient SML branch offices of SML would be eligible to avail input tax credit of GST charged by SML Maharashtra. However, the Hon’ble Maharashtra Authority of Advance Ruling did not answer the question and stated that the applicant in that case i.e. SML Maharashtra is not the proper person to raise this question.

2.6 The applicant has stated that an advance ruling pronounced by the Authority for Advance Ruling is binding only on the applicant who has sought the ruling and on the concerned officer or the jurisdictional officer in respect of the applicant and not applicable to similarly placed other taxable persons in the state or any other state. Therefore, the ruling pronounced by the Maharashtra Authority for Advance Ruling is only limited to SML Maharashtra.; that it may be imperative to note that the authority for Advance Ruling observed that supply of cranes, Crane components and trailer on lease /hire charges by SML Maharashtra to the applicant constitutes inter-state taxable supply of service between two distinct person and liable to pay IGST under the provision of IGST Acts.; GST being a consumption based tax, the IGST paid by SML Maharashtra, would be available with the Tamilnadu Government since the place of supply of the said transaction would fall in Tamilnadu in terms of Section 12(2) of the IGST Act. Therefore, they have submitted that the applicant would be entitled to avail credit of IGST charged, on the following grounds

- i. Applicant receives tax invoice from SML Maharashtra on monthly basis.
- ii. Applicant actually receives service from SML Maharashtra because only on receiving the cranes on hire charges from SML Maharashtra, can the applicant further Sub-lease the cranes to their ultimate customers
- iii. IGST charged by SML Maharashtra is paid in to Government treasury of Tamil Nadu

iv. Regular GST returns as applicable are furnished by SML Maharashtra and the applicant.

Further as the said transaction is taking place between distinct persons as defined under Section 25(4) of the CGST Act and is treated as supply, as per Schedule I of CGST Act: as per the proviso to Rule 37 of the CGST rules, the condition to make actual payment to supplier within 180 days is not applicable to the applicant and they are entitled to avail credit of the IGST charged by SML Maharashtra by making deemed payment by netting off receivable and payable in book of accounts.

2.7 In the light of the above facts, the applicant has sought the authority for advance ruling to determine the admissibility of ITC of the IGST paid by SML Maharashtra in the hands of the applicant.

3. The authorized representative for the applicant appeared for Personal Hearing on 21.5.2019. The learned representative stated that their Office in Maharashtra owns the cranes, and the Chennai Office enters into work order for leasing with operators of their equipment. On this basis, rental/lease without operation work order is entered into between Maharashtra and Chennai office and they raise the invoice with IGST charge under SAC 997319. They stated that they would be eligible to claim ITC on IGST charged in such invoices and they would submit GSTR 2A, copy of a month returns linking their transactions within a week's time.

4.1 Further, to the hearing held on 21.05.2019 the applicant on 07-06-2019 has emailed copies of the returns in GSTR-1 of SML Maharashtra, the applicant and samples invoices for reference to support their claim of eligibility to avail ITC charged in the invoices raised by their head office at Maharashtra for the supply of services of cranes to be leased out to customers in Tamil Naidu and GST returns filed by them.

4.2 All the documents submitted by the applicant were examined. It is seen that Sanghvi movers Ltd, Pune, (Head Office)(SML HO), service provider, has entered into an MOU with the applicant, Sanghvi movers Ltd, Chennai (TN Depot), service recipient, on 01.07.2017.

As per the MOU,

- the applicant will place an internal work order on SML as and when the applicant receives work order from their customers for lease or hire of Cranes, Crane components, etc. (Para 2)
- The applicant shall take the Cranes, Crane components, etc. on lease/hire for sub-leasing/sub-hiring purpose for the term based on the period of underlying work-order between the applicant and their customers and can be extended if the underlying work-order is extended (Para 3)
- SML HO will retain the right, title, interest, ownership in the equipment and the same will remain property of SML HO but SML shall have full right to retain possession for further sub-leasing/hiring to its customers(Para 4)
- During the period when the Cranes, Crane components, etc. are in Tamilnadu, the applicant will keep all cranes, components, etc. in good repair, condition and working order and shall procure all parts, mechanisms, devices and servicing required thereof from SML or from third party post obtaining the written consent from SML. For upkeepment and maintenance activity, the applicant will raise a taxable invoice and recover an amount on a cost plus mark-up as mutually agreed between SML and the applicant on a quarterly basis (Para 6)
- The applicant will locally procure diesel required for running the Cranes and Trailer to Customer Site & bringing back (Para 7)
- SML will be responsible for undertaking mobilization and demobilization activities, the cost of which will be borne by SML(Para 9)
- At the time of raising internal work order on SML, lease/hire charges will be charged at the rate as per the rates agreed in respective work order and upkeepment charges will be as per the Schedule-I of the MOU (on a monthly per crane basis depending on capacity of crane). Such lease/hire charges payable by the applicant to SML by the netting off receivable & payable in the books of accounts and will be treated as deemed payment as per the provisions of GST Law.(Para 10)

It is seen from the purchase orders and invoices submitted by the applicant that customers of SML are placing service orders on SML. SML in turn place a work order on SML HO with site address mentioning the address of the customer of SML . Work Order mention that the monthly rental will be based on the underlying

work-order with the customer of SML which will be 90% of that amount. SML HO issues invoice on SML with both billing and shipping also to SML.

5. We have carefully considered the submissions of the applicant. It is seen that SML is a public limited company incorporated in the year 1989 under the provisions of the Companies Act, 1956 and engaged in the business of providing medium – sized heavy-duty cranes on rental/lease/hire basis to its clients without transferring the right to use the cranes. SML has pan-India presence and cranes are deployed across India as per the requirements of customers. In the instant case the question raised is

i. Whether on facts and circumstances of the case, since Integrated Goods and Services Tax (“IGST”) is payable on inter-state movement of cranes by the supplier (i.e. SML Maharashtra), whether the recipient office of SML (i.e. SML Tamil Nadu, the applicant) duly registered under GST receiving such cranes for further supply on hire charges would be eligible to avail input tax credit (ITC) of IGST charged?

6.1 The facts of the case as available on record is that the applicant is a branch office of SML HO, Maharashtra. Under GST, the applicant and SML being distinct entity has obtained registrations separately

Section 25 of CGST ACT states

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act

Accordingly, SML HO and SML are distinct persons for the persons of CGST ACT.

Further the applicant has entered into a Memorandum of understanding with SML for ‘Crane & Trailer Supplies to SML Depot at TN (Chennai) on 01.07. 2017 where SML HO agrees to provide cranes, cranes components, parts & trailer on monthly rental basis to SML as and when an internal work order on SML HO is placed by SML. The period will commence from the date the underlying work-order with customer of SML Depot and post the completion of the lease /hire, the cranes and components will be moved to nearest SML depot in Chennai. The ownership rests with SML HO. SML will raise a taxable invoice and recover amounts towards cost

plus mark –up for upkeepment and maintenance activity. SML will be charged at the rate as per rates agreed in a respective work order. It is seen from Para 10 of MOU further states that lease/hire charges payable by SML to SML HO is netted off receivable and payable in books of accounts and is considered as deemed payment.

It is seen that though SML HO invoices to SML at 90% of the underlying billing by SML to its customers, the full amount is not being paid. As per the MOU, the same is being netted off against the receivable by SML for the upkeepment charges that SML HO has to pay to the applicant as per the MOU.

6.2 The eligibility to Input Tax Credit is governed under Section 16 of CGST Act 2017. The relevant provisions are given under for ease of reference:

Section 16 of CGST Act

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 and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

6.3 The applicant has furnished a set of documents giving a sample transaction along with the application. On perusal, it is seen that the customer has placed a service order for Crane hiring, based on which the applicant has placed a work order on SML and Tax invoice is raised by SML on the applicant and thereupon by the applicant on the customer. The applicant states that in each transaction a tax invoice is raised and the goods are received by SML who further leases them out to its (SML's) customers. The applicant has also submitted sample copies of GST returns filed by them with payment to GST. However, it is seen from the MOU itself (Para 10) that the applicant is not paying the full consideration of the transaction to SML HO but the same is being netted off against the receivable by SML for the upkeepment charges that SML HO has to pay to the applicant as per the MOU.

Proviso to Section 16(2) (d) states that where a recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

The same is prescribed in Rule 37 of CGST Rules:

37. Reversal of input tax credit in the case of non-payment of consideration.-(1)A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall furnish the details of such supply, the

amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

As per proviso to Section 16(2), the applicant will not be eligible for full input tax credit as they are not paying the full amount to their supplier SML HO as seen in the MOU where payments are netted off against receivables. The applicant in his application has stated that as per proviso to Rule 37, the condition to make actual payment to supplier within 180 days is not applicable to the applicant. However, the proviso clearly states that, the value of supplies "made without consideration" as specified in Schedule I shall be deemed to have been paid as per second proviso to Section 16(2). In the instant case, there is a consideration to be paid by SML to SML HO as per Para 10 of the MOU and the consideration is specified in the invoices raised by SML HO on the applicant. Hence, proviso to Rule 37 i.e. exemption from making full payment, will not be applicable to the applicant. Accordingly, the applicant will not be eligible for the full ITC as per the inward supplies received from SML HO as they would be required to reverse such ITC if taken as per second proviso Section 16(2) of CGST Act and Rule 37 of CGST Rules. In the instant case, the transaction is an inter-state supply as the supplier is in a different state from the place of supply, the applicant would be paying IGST on their inward supplies from SML HO. As per Section 20 (iv) of IGST Act, provisions of Central Goods and Services Tax Act relating to input tax credit shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act. Accordingly, the applicant is not eligible for the full ITC on the inward supplies received from SML HO, but only to the extent specified in the restrictions as per second proviso Section 16(2) of CGST Act and Rule 37 of CGST Rules read with Section 20(iv) of IGST Act.

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

RULING

On the supplies received from M/s Sanghvi Movers Ltd., Maharashtra, the applicant M/s Sanghvi Movers Ltd., Tamil Nadu, is not eligible for the full Input Tax Credit but only to the extent specified in the restrictions as per second proviso Section 16(2) of CGST Act and Rule 37 of CGST Rules read with Section 20(iv) of IGST Act, subject to fulfillment of all other conditions under section 16 of CGST Act, read with Section 20(iv) of IGST Act.

Ms. Manasa Gangotri Kata
21/6/19

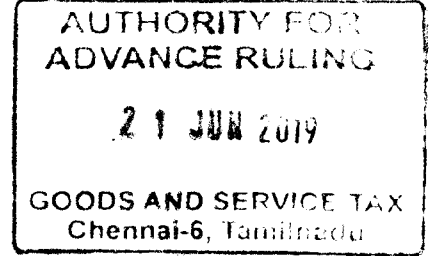
Ms. Manasa Gangotri Kata,
Member, CGST

Shri. Kurinji Selvaan.V.S.
21.06.2019

Shri. Kurinji Selvaan.V.S.,
Member, TNGST

To

M/s. Sanghvi Movers Limited
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TamilNadu 600 123.



// By Speed Post with Ack. Due //

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