

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 07/2020/AAAR

Date: 10.03.2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/10/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s ICU MEDICAL INDIA LLP 129-140 Prestige palladium Bayan, 1 st and 7 th floor, Greams Road, Nungambakkam, Chennai-600006
GSTIN or User ID	33AAGF13243MIZD
Advance Ruling Order against which appeal is filed	Order No. 23/ARA/2020 dated 04.05.2020
Date of filing appeal	16.10.2020
Represented by	Thiru.SiddarthChandrasekhar, Thiru.K.Sivarajan, Thiru.Srihari VK
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Nungambakkam Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.RBIS20103300226417 dated 14.10.2020

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.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by Tv1. ICU Medical India LLP, (hereinafter referred to as 'Appellant'. The appellant is registered under GST vide GSTIN 33AAGF13243MIZD. The appeal is filed against the Order No. 23/ARA/2020 dated 04.05.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 As per the Statement of Facts in Annexure A filed along with the Appeal, the Appellant is engaged in the business of Software development for the Infusion system

manufactured by its ultimate holding Company ICU Medical Inc., (hereinafter referred to as '**ICU Inc.**'), having its place of business located at USA. ICU Inc., in turn has entered into a Cardholder User agreement with the employees of the Appellant for issuance of Credit Cards. The Credit Cards issued to the employees are meant to be used only for business related expenses within and outside India. (Travel, accommodation in the hotel, food expenses, etc.) The employees of the appellant use the credit card for procuring travel related services for/on behalf of Appellant. In this regard, normally the vendor raises invoice on the Appellant and the Appellant claims eligible credits based on the invoices. In cases where invoices are raised on the employees (e.g. online order of food, cab etc), GST credit is not taken on the same.

2.2 It was stated that the Employees of the appellant submit expenses statement along with supporting documents by 20th of every month for the transactions incurred up to 15th of that month. ICU Inc. downloads and shares the monthly credit card statement with the appellant. The Appellant books the expenses in its books based on the invoices provided by the employees and the credit card statement. Appellant debits the respective expenses account and credits the intercompany payable account. Where Input tax credit is involved, the eligible GST amount will be debited to the GST Input Tax credit account by crediting the expenses Account. Subsequently, ICU Inc. recovers this amount from Appellant. A commercial invoice is raised by ICU Inc. on the appellant for the reimbursement towards payment for expenses incurred by the Appellant. ICU Inc., raises a monthly commercial invoice on the appellant under two categories mentioned below:

- Reimbursement of payment made towards Credit Card Expenses
- Reimbursement of Bank Charges towards Credit Card Expenses

2.3 The Appellant provides software development service to ICU Inc., under a software development agreement. The consideration for the development service is agreed to be made on a cost plus margin basis. The expenses incurred by the Appellant through this credit card also forms part of software development cost and subsequently included in invoice raised by the appellant on ICU Inc for development of software.

2.4 With the above information and detailed submissions and with documentary evidences, the Appellant had filed an application before Honorable Authority for Advance Ruling, Tamil Nadu (hereinafter referred to as “Authority”) on October 16, 2019 seeking clarification on:

1. *Whether GST is leviable on the reimbursement of the subsidiary company to its ultimate holding company located in a foreign territory outside India.*
2. *In case GST is leviable, what is the GST rate applicable to the said reimbursement of expenses*

In the submissions before the AAR, the appellant had also stated that no cash withdrawals are allowed to the employees from the said credit card.

3. Aggrieved by the decision of the AAR in pronouncing that the reimbursement is taxable at 18% at RCM as per Sl. No 1 Notification 10/2017- Integrated Tax (Rate) dated 28.06.2017 as applicable to the service classification head 9971, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- The payment made by the appellant to ICU Inc is not a supply and it is transaction in money;
 - Reimbursement of payment made towards expenses for credit card does not constitute supply from ultimate holding company to its subsidiary company as defined under Section 7 of the CGST Act, 2017;
 - ICU Inc. is an intermediary and not providing any services to the Appellant.
 - The impugned order erred in concluding that the appellant has to pay to ICU Inc., for the privilege of using the Credit Cards;
- The impugned order erred in not considering the independent supplier of goods or services or both providing travel and conveyance services on which the service provider has raised invoice on the Appellant;
- The impugned order erred in holding that ICU Inc., is providing credit granting services to the Appellant;
- The impugned order has erred in stating that the Appellant has to pay ICU Medical Inc for the privilege of using the credit card;

- The impugned order has erred in not considering the fact that independent service providers provide travel and conveyance services on which the service provider has raised invoice on the Appellant independently. ICU Inc., merely collects the amount relating to such expenses relating to Appellant for settling the credit card dues;
- The appellant is the recipient of goods or services and availing the eligible input tax credit based on the tax invoices issued by the suppliers;
- the payments made by the appellant to the ultimate holding company towards reimbursement of payments made towards credit card expenses are transaction in money and not a supply and consequently, the same is not liable to GST under Reverse Charge Mechanism.

PERSONAL HEARING:

4. The Appellant was granted personal hearing as required under law before this Appellate Authority on 22nd January 2021. The Authorized representatives of the Appellant Thiru.SiddarthChandrasekhar, Thiru.K.Sivarajan, Thiru.Srihari VK of the appellant company appeared for hearing. They reiterated the written submissions filed along with the Appeal. They stated that, according to them, it is a pure transaction in money and the same is not to be treated as 'supply'. They further stated that credit card service can be provided only by the Bank. The appellant is paying to ICU medical Inc. as the expenses are of the appellant and GST is not applicable to the said transactions.

DISCUSSION & FINDINGS:

5.1 We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. It is an admitted fact as seen from the Annexure A filed along with ARA-2 by the appellant that the appellant is in the business of software development for the infusion systems manufactured by its overseas holding company. During the course of supplying such software development services, the appellant company incurs expenses, which represents cost of the services and with a margin, consideration is received from the overseas holding company. The travel related expenses is incurred through credit card of employees of the appellant;

the credit card is however issued by the overseas holding company and the expenses incurred through the credit card are initially settled by the holding company abroad with the card issuing bank. For the purpose of accounting and operational convenience, the expenses incurred through such credit card issued by the overseas holding company to the employees of the appellant company, are first recovered from the appellant through invoice raised from USA company and subsequently included in the invoice raised by the appellant on the holding company for the development of software. In other words, the reimbursements paid by the appellant to the holding company for the expenses incurred initially by its employees are nothing but part of software development cost and consequently part of the taxable value of services of appellant.

5.2 It is another admitted fact from the same statement of facts of the appellant that it takes ITC on such expenses incurred through the credit card issued by the holding company, wherever possible. In other words, since as per card holder agreement, the expenses are only to be business related, the employees use the credit card for procuring services and goods on behalf of the appellant while undertaking business activities like travel, accommodation, food, etc. The entire business of the appellant being with the overseas holding company and the expenses being part of the software development cost (as admitted by the appellant himself), it is simple and clear that these expenses, even when they are paid back (reimbursed) by the appellant to its recipient of services (overseas holding company) and later included in the taxable value in the invoice of the appellant are nothing but part of the consideration received by the appellant from its recipient. In other words, the expenses borne by the recipient overseas holding company of the appellant and later reimbursed but again included in the taxable invoice are in the nature of advance consideration paid by the recipient to the supplier appellant and the time of supply provisions relating to advances received by a supplier of services as per Section 13 of the GST Act will be applicable.

5.3 The fact of reimbursement does not result in any transaction in its own, as was held by the AAR, but such expenses of employees of appellant through the credit card of the overseas holding company (recipient of the supply of appellant), borne at the first instance by the recipient of the supply is nothing but which the supplier

(appellant) was liable to incur and reimbursed are for the only purpose of restoring the appellant company's accounts to previous position for operational convenience so that the same could be later included in the software development charges invoiced by the appellant to the recipient (overseas holding company). There is indeed an economic rationale for such treatment of expenses as transfer of resources happened between the appellant supplier to its overseas holding company recipient. Such reimbursements as per Section 15 of the GST Act read with sequential application of Rules 28-31 of the GST Rules are to be included in the value of supply and tax is to be paid as per the time of supply provisions applicable to such transactions ; as per the admission of the appellant, the same is however being included albeit later in the tax invoice raised by the appellant.

6.1 In our opinion, GST is therefore to be paid on such amounts of expenses reimbursed at the time determined as per Section 13 of the GST Act, as it represents the part of consideration received in advance by the appellant from its recipient (notwithstanding that the same is later included in tax invoice of the appellant) and to be paid at the time of reimbursement as by then the actual expenses borne by the recipient is known. Therefore, the first question sought by the appellant is answered in affirmative.

6.2 The applicable rate of GST on such expenses incurred by the recipient and reimbursed by the appellant is the same rate at which the appellant charges for the software development service supplied by the appellant to the overseas holding company, on the ground that the expenses are part of the taxable value of such services and attract the same rate indicated in the tax invoice for the software development charges issued by the appellant on the overseas holding company.

7. In view of the above, we pass the following Order:

RULING

For reasons discussed above, the Ruling pronounced by the Advance Ruling Authority is modified to the extent that GST is leviable on the reimbursement amount, being advance payment made by the holding company towards the

cost incurred for the provision of Software Services supplied by the appellant, as per the Time of Supply provided under Section 13 of the CGST/TNGST Act 2017 and applicable rate is that applicable to the supply of Software Services made by them. The subject appeal is disposed of accordingly.

(M.A.SIDDIQUE)
Principal Secretary/
Commissioner of Commercial Taxes
Tamilnadu/Member AAAR

(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GT & Excise,
Chennai Zone/Member, AAAR.



To
M/s ICU MEDICAL INDIA LLP
129-140 Prestige palladium Bayan,
1st and 7th floor, Greams Road,
Nungambakkam, Chennai-600006

Copy 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/Member,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. Joint Commissioner(ST)/Member,
Authority for Advance Ruling, Tamil Nadu,
Room No.503B, 5th Floor,
Integrated Commercial Taxes Office Complex,
No.32, Elephant Gate Bridge Road,
Chennai-600 003.
3. The Commissioner of GST & Central Excise,
Chennai North Commissionerate.
4. The Assistant Commissioner (ST), Nungambakkam Assessment Circle.
Nungambakkam Taluk Office Building, Spurtank Road, Chetpet, Chennai-31
5. Master File/ Spare.