

**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 – 600 034.
2. Thiru Kurinji Selvaan 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. 45 /AAR/2019 DATED:26.09.2019

GSTIN Number, if any / User id		33AAALC0025B1Z9
Legal Name of Applicant		M/s. CHENNAI PORT TRUST
Registered Address/Address provided while obtaining user id		No.1, Rajaji Salai, Chennai-600001.
Details of Application		GST ARA-01 Applications Sl. No. 31/2018 dated 20.06.2018
Concerned Officer		Centre: Chennai North Commissionerate-Division - Egmore State: The Assistant Commissioner (ST), Harbour Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in Brief)	The Applicant is engaged in supply of port services and incidental supply of goods like disposal of discarded assets.
Issue/s on which Advance Ruling required		Admissibility of input tax credit of tax paid or deemed to have paid and determination of time and value of supply of services
Question(s) on which Advance Ruling is required		Whether on the facts and in the circumstances given in the application, when the time of supply can be considered to occur with respect to providing continuous supply of services in the nature of renting immovable properties in the following 4 situations i. The licensee does not react to the periodical reminder letters issued by the applicant and also does not pay the monthly license fee to the

applicant.

ii. The licensee disputes amount of license fee the periodical reminder letters issued by the applicant by means of reply letters and also does not pay the periodical license fee to the applicant.

iii. The Licensee disputes the periodical reminder letters issued by the applicant asking for license fee by initiating legal dispute before the legal forums like arbitration, court etc., as provided in the license agreement and does not pay the periodical license fee to the applicant; and

iv. The licensee disputes the periodical reminder letters issued by the applicant asking for license fee by initiating legal dispute before the legal forums like arbitration, court etc., as provided in the license agreement; but pays under protest adhoc amounts which are part of periodical license fee payable by him under the expired license agreement .

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. Chennai Port Trust, No.1, Rajaji Salai, Chennai-600001, (hereinafter called the Applicant) is engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are registered under GST with GSTIN 33AAALC0025B1Z9. They have preferred Applications seeking Advance Ruling on the following questions:

Whether on the facts and in the circumstances given in the application, when the time of supply can be considered to occur with respect to providing continuous supply of services in the nature of renting immovable properties in the following 4 situations

- i. The licensee does not react to the periodical reminder letters issued by the applicant and also does not pay the monthly license fee to the applicant.
- ii. The licensee disputes amount of license fee the periodical reminder letters issued by the applicant by means of reply letters and also does not pay the periodical license fee to the applicant.
- iii. The Licensee disputes the periodical reminder letters issued by the applicant asking for license fee by initiating legal dispute before the legal forums like arbitration, court etc., as provided in the license agreement and does not pay the periodical license fee to the applicant; and
- iv. The licensee disputes the periodical reminder letters issued by the applicant asking for license fee by initiating legal dispute before the legal forums like arbitration, court etc., as provided in the license agreement; but pays under protest adhoc amounts which are part of periodical license fee payable by him under the expired license agreement .

The Applicant has submitted the copy of applications in Form GST ARA - 01 and also submitted the copy of Challans evidencing payment of Application Fees of Rs.5,000 per application - each under Sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The applications filed by the applicant are taken up together for consideration and passing of Rulings.

2. The Applicant has stated that they are engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are notified as a major port by the Central Government under Section 3(8) of Indian Ports Act 1908 r.w.s. 2(m) of Major Port Trusts Act, 1963 vide notification No. GST (E) dt 01.02.1975. The affairs of the applicant are administered by a Board constituted by the Central Government from time to time as per the provisions of Major Port Trusts Act, 1963. The applicant is functioning under the administrative control and supervision of Ministry of shipping of Government of India.

3. The applicant in application ARA No. 32, has stated that they have rentable land and buildings. As a part of port activity, these lands and buildings are rented/licensed to various port users. The port users use these land and buildings for the purpose of open storage, covered storage and transit of goods and for movement of goods like buried pipe line. The licensing normally falls under the

definition of "continuous supply of services" since the licensing is done for a minimum period of 11 months and goes up to 30 years as provided in the Major Port Trusts Act, 1963. There are many cases where the license agreement is not renewed on its expiry, but the licensee continues to occupy the licensed premises. In such a situation, the applicant does not issue a tax invoice containing the particulars mentioned in Section 31 of CGST Act 2017, but issues a reminder letter to pay monthly fee based on the expired license agreement. Consequently the following 4 situations occur, which are the subject matter of the questions raised in this application. The applicant on the interpretation of the statutory provisions has stated that the TOS for CSS needs to be determined as the earliest of the following and has elaborated on the applicability of each of TOS as under:-

- i. The date of receipt of payment by the applicant whether or not invoice is issued -U/S 13(1)(a);- they admit that TOS for CSS occurs when un-protested payment is received and to the extent of such receipt by treating the receipt as cum-tax (not a matter under this proceedings)
- ii. The date of provision of service if invoice is not issued within the period prescribed/s 31(2)[13(2)(b)] - is not possible since the licensee disputes the very provision of service either by raising disputes by writing letters or litigating before arbitration, courts, etc
- iii. the date on which the licensee shows the receipt of services in his books of account [13(2) (c)] - not possible since the applicant does not have access the books of account of the licensees/ service receivers to ascertain the date on which the licensee shows the receipt of services in his books of account as required in Section 13(2) (c)
- iv. The date of issue of invoice by the applicant, if the invoice is issued on or before the due date of payment as ascertainable from the Contract u/s 31(5) (a); - not possible since the due date of payment is not ascertainable from the contract, which is a pre-requisite for the fact that the contract, namely license agreement which is expired and not in force. They do not issue invoice even in cases where the license agreement is in force, but issues only periodical claim letters which cannot be considered as invoice as required u/S 31. Even if the invoice is issued by them, the licensees refuses to recognize the invoices of the assessee and as well refuse to (1) pay at least the GST portion; or (2) take credit and reverse immediately as provided in 2nd and 3rd proviso to Section 16(2), for fear of losing the ongoing dispute, litigations with them. Consequently, determination of TOS on raising of

periodical invoices before receipt of payment will lead to anomalous situation where they pay GST to Government, but which is not availed as ITC by the licensee/service receiver which is otherwise can be availed by them & thereby results in cascading effect which is opposed to the very ITC scheme of GST

v. The date of issue of invoice by the applicant, if the invoice is issued before the applicant receives the payment u/s 31(5) (b)-TOS for CSS does not occur since the periodical reminder letters issued by the applicant cannot be construed as 'invoice' for the purposes of the Act since these periodical reminder letters does not show all the particulars mentioned in Section 31(2) and the particulars prescribed in Rule 46 of CGST Rules 2017

vi. The date of completion of each and every event in cases where payment to the applicant is linked to the completion of an event u/s 31(5)(c) -It is not possible to determine TOS under this situation since the term "Completion of event" used in the criteria is not defined in the Act or in the Rules and that the amounts to be received by the applicant are not linked to completion of any event; but linked to completion of time as per the license agreements. "Completion of time" is NOT "Completion of event", a term used in Section 31(5) (c).

4.1 The Applicant was granted personal hearing on 24.09.2018 in respect of all the above application. The applicant represented through authorized representative. The submissions during the hearing are as under:

Sample lease agreement for renting of immovable property, rent claim advice will be submitted. The rent claim advice is raised monthly if lease agreement is valid, when it is expired it is renewed and invoices are raised for the back period also.

They stated that they will submit all the documents in two weeks and also requested for further hearing.

4.2 The applicant through their authorized representative furnished the following documents on 26.10.2018. The details of the documents furnished are as under:

(TOS for CSS in the nature of renting of immovable properties): - (1) Copy of Agreement entered with State Bank of India for the period 01.04.2015 to 31.03.2020; (2) Copy of agreement dated 14th July 2016 entered with R R Stones Private Limited for the period 05.03.2016 to 04.03.2021; (3) Copy of

Agreement dated 04th November 2015 entered with Raj Petro Specialities Private Limited for the period 04.11.2015 to 03.11.2020 and (4) Copy of Letter of Allotment No. LBS4/2815/2017/E dated 17.02.2018 issued to Total Care Services Private Limited for a period of 10 years.

5.1 As requested by the applicant and on account of change in the SGST Member of the authority, another personal hearing was extended on 22.02.2019. The applicant appeared through their Authorized Representative and stated as follows:

In respect of the renting of immovable property, they will provide category-wise details of date of invoice, payments received, provision of service dates in a typical license /contract of renting to decide on the time of supply.

The applicant undertook to submit the documents in 2 weeks. The State jurisdictional officer appeared and submitted written comments on the ARA.

5.2 The applicant did not furnish the documents as undertook by them. However, in the interests of natural justice, the applicant was addressed to furnish the documents vide letter dated 09.04.2019. The applicant vide their letter dated 21.05.2019, furnished the following documents: Rent Claim Advice pertaining to M/s. Indian Oil Corporation Ltd.

6. The remarks of the State Jurisdictional Officer on the questions raised by the applicant in the ARA application are detailed below:

Though the agreement entered upon with the licensee is not renewed it is the duty of the applicant either to renew the agreement or to take steps to vacate the licensee. It is the dispute between two individual parties. Under the Income Tax Act once bill is raised and money consideration is not received it is treated as income and income tax is worked out. Similarly it is the duty of the applicant to raise invoices till the assessee vacates the premises and declare the turnover under the GST Act and pay the tax due thereon whether or not the licensee has paid the amount. The definition of "time of supply" or "continuous supply of service" relied under Section 31 is not applicable in the case of breach of contract. The applicant has to raise invoice and declare the turnover where agreement was not renewed. Wherever, the applicant receives adhoc payment the applicant has to declare the amount as per

agreement and pay the tax. The litigation may be continued by way of appeal, arbitration etc., and the Government need not wait till the disposal of individual disputes.

7. We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the State Jurisdictional Officer. We find the applicant has filed applications seeking ruling on the question of the Time of Supply in the given circumstances. The issues raised are within the purview of the Advance Ruling under Section 97 (2) of the GST Act and accordingly, the applications are taken up for consideration. It is seen from lease agreements with State Bank of India for 01.04.2015 to 31.03.2020, R R Stones Private Limited for the period 05.03.2016 to 04.03.2021, Raj Petro Specialties Private Limited for the period 04.11.2015 to 03.11.2020 and Total Care Services Private Limited for a period of 10 years that the lease fee is to be paid monthly or with an upfront payment and rent to be paid annually. It is seen that there is a requirement of the lessee to pay lease rent or license fee periodically while they occupy the immovable property. During the currency of the lease agreement, the applicant issues an invoice periodically as required in the respective lease agreement.

The question raised by the applicant in this application is as follows:

Whether on the facts and in the circumstances given in the application, when the time of supply can be considered to occur with respect to providing continuous supply of services in the nature of renting immovable properties in the following 4 situations

- i. The licensee does not react to the periodical reminder letters issued by the applicant and also does not pay the monthly license fee to the applicant.
- ii. The licensee disputes amount of license fee the periodical reminder letters issued by the applicant by means of reply letters and also does not pay the periodical license fee to the applicant.
- iii. The Licensee disputes the periodical reminder letters issued by the applicant asking for license fee by initiating legal dispute before the legal forums like arbitration, court etc., as provided in the license agreement and does not pay the periodical license fee to the applicant; and

iv. The licensee disputes the periodical reminder letters issued by the applicant asking for license fee by initiating legal dispute before the legal forums like arbitration, court etc., as provided in the license agreement; but pays under protest adhoc amounts which are part of periodical license fee payable by him under the expired license agreement .

8.1 Section 7 of CGST/TNGST Act states:

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

.....

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

SCHEDULE II ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

5. Supply of services The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

It is seen that renting of immovable property is a supply of service by virtue of the Schedule II.

'Continuous supply of Service' is defined under section 2(33) of CGST /TNGST Act as follows:

"continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify

In respect of renting of immovable property there is no real completion of supply of service, except what is specified in the contract. The lessee receives the service of renting throughout their stay on a continuous basis. The payments are periodic as determined by the lease agreement usually monthly or annually. Therefore, for contracts for renting of immovable properties where the period of the lease/ actual stay is more than three months, as is the case here, the service is a continuous supply of service.

8.2 Time of Supply of Service is provided under **Section 13** of the GST Act, which is given under for ease of reference:

13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply;

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier

Section 31, which is as below:

31. (2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

.....

(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

(a) Where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) Where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Rule 46 of the CGST/TNGST Rules, provides the details to be available in the Tax Invoice.

46. Tax invoice.—Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,—

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolized as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered), of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;
- (g) Harmonized System of Nomenclature code for goods or services;
- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and (q) signature or digital signature of the supplier or his authorised representative;

Rule 47 of the CGST/TNGST Rules

47. Time limit for issuing tax invoice.- The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:

8.3 In view of the above, we take up the question before us In respect of continuous supply of service when the license is in effect , as per Section 31(5), the tax invoice, containing the details as per Rule 46 of CGST/TNGST Rules ,should be raised on or before due date of payment as ascertainable from the contract. It is seen in the sample contracts provided that in certain cases, the due date of payment is periodical, either monthly or annually, with the due dates

specified after the end of such period. If the rent invoice is issued before the due date of payment, the Time of supply is determined by Section 13(2) (a), as the earliest of the date of issue of invoice by the supplier and the date of receipt of payment. If payment is not received for any reason, including legal disputes, the time of supply shall be date of issue of invoice.

If the invoice is issued after such due date of payment, the Time of supply is determined by Section 13(2)(b), as the earliest of the date of provision of service which is the end of the period (monthly/annual etc.) specified in the contract and the date of receipt of payment, whichever is earlier. If payment is not received for any reason, including legal disputes, the time of supply shall be the date of provision of service which is the end of recurrent period specified in the agreement after which the rent/license fee is to be paid.

The applicant also asks the time of supply in cases where instead of receiving the full consideration, they only get a partial amount as payment. In these case too the above will apply as the date of payment of full consideration is the date of reckoning of the date of payment.

9. In view of the foregoing, we rule as under:

RULING

In all the specified scenarios in the question, when the license for renting of immovable property is in force, but the licensee does not pay or pays only partially the periodical license fee to the applicant as agreed in the lease agreement, if the rent invoice is issued before the due date of payment as specified in the agreement, the Time of supply as determined by Section 13(2) (a) shall be date of issue of invoice or Rent Claim Advice. If the invoice is issued after such due date of payment, the Time of supply as determined by Section 13(2)(b) shall be the date of provision of service which is the end of recurrent period specified in the agreement after which the rent/license fee is to be paid.

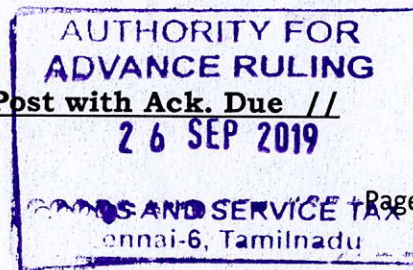
K. Manasa
Ms. Manasa Gangotri Kata,
Member, CGST

Shri. Kurinji Selvaan 26/9/2019
Shri. Kurinji Selvaan.V.S.,
Member, TNGST

To

M/s. Chennai Port Trust.
No. 1, Rajaji Salai, Chennai - 600 001

// By Speed Post with Ack. Due //



26 SEP 2019

GOODS AND SERVICE TAX
Chennai-6, Tamilnadu

Page 11 of 12

Copy Submitted to:

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

Copy to:

3. The Commissioner of GST & C.Ex.,
Chennai North Commissionerate,
4. The Assistant Commissioner (ST),
Harbour Assessment Circle, Chennai- 600 001.
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