

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

A.R.Appeal No. 6/2019/AAAR

Date:13.11.2019

**BEFORE THE BENCH OF**

**1. Thiru. M. AJIT KUMAR, MEMBER**

**2. Dr. T.V.SOMANATHAN, MEMBER**

**ORDER-in-Appeal No. AAAR/08/2019 (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 sb-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	Sanghvi Movers Limited 121, chembarambakkam, Chennai Bangalore Road, Poonamallee, Chennai 600123
GSTIN or User ID	33AACCS3775K1Z4
Advance Ruling Order against which appeal is filed	Order No. 26/AAR/2019
Date of filing appeal	27.08.2019
Represented by	
Jurisdictional Authority-Centre	Chennai Outer Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Poonamallee 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.SBIN19083300361900 dated 20.08.2019

**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 (hereinafter referred to 'the Act') by M/s. Sanghvi Movers Limited (hereinafter referred to as 'Sanghvi' or 'Appellant'). The appellant is registered under GST vide GSTIN 33AACCS3775K1Z4. The appeal is filed against the Order No.26/AAR/2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. Sanghvi Movers Limited ("SML") is a public limited company incorporated in the year 1989 under the provisions of the Companies Act, 1956. SML is 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. SML has a large fleet of more than 400 cranes ranging from 40 MT to 800 MT lifting capacity. 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(the appellant/sanghvi). 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.

2.1 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 appellant 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. On receipt of internal work order from the appellant, SML Maharashtra transports the crane and its components to the customer's location /project location on the instructions of the appellant. 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 appellant on respective customers. Further, an invoice from SML Maharashtra is issued to

the appellant and the value considered for levying GST is approximately 95% of the value charged to the customer by the appellant.

2.2 SML Maharashtra discharges IGST on the value of hire charges recovered from the appellant treating the same as inter-state supply of service. Consequently, the recipient i.e. the appellant avails credit of IGST charged/paid by SML Maharashtra on the value of hire charges charged on the invoice. The appellant sought the authority for advance ruling to determine the admissibility of ITC of the IGST paid by SML Maharashtra in the hands of the appellant.

3. The Original Authorities has ruled as follows:

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.

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- In case of supply of cranes, crane components and trailers on lease/hire charges by SML Head Office in Maharashtra to SML Depot in Tamil Nadu the same constitute a supply of service between two distinct entities as per provision of GST law. In order to regulate these transactions and follow a consistent practice in line with the provisions of GST laws, MOU is entered.
- The impugned order has not read the MOU as a whole. Instead a few clauses such as Para 6 and 10 in the MOU have been read without collectively considering the intention of the MOU. The contention placed by the Authority that consideration has been agreed in the MOU has not considered the fact that consideration has been agreed in the first place only for the purposes of compliance with the valuation provisions under GST law. The transaction in its commercial sense is still without any consideration, as is the case in the case of branch transfers, as an entity the commercial contractual arrangement is always vis-à-vis customers.

The Authority has erred in concluding that consideration is agreed in the MOU only because the following sentence has been used in Para 10 of the MOU:

*....At the time of raising internal work order on SML HO by SML Depot lease/hire charges for the Cranes, Cranes components, parts and Trailer' will be charged at rate as per the rates agreed in a respective work order and up-keepment charges will be as per and specified in Schedule I enclosed hereunder. "*

- The above clause in Para 10 when read with the preamble, clearly indicates that the consideration specified in the MOU is only for the purposes of compliance with valuation provisions under GST law. Such consideration does not have any sort of commercial substance.
- Being a legal entity, accounting of revenue and flow of money is only when the transaction is with customer, inter-branch transactions are not considered to be revenue generating transactions. Since GST law requires the tax payers to undertake GST compliances and discharge GST liability, it is necessary to assign a value for such inter-branch transactions.
- The objective of preparing MOU is to ensure business operation feasibility and compliance with provision under GST law. The need to enter into an MOU arose only on account of Schedule I of CGST Act, wherein transactions between distinct persons even if made without consideration have been subjected to GST. Therefore, the Appellant is of the view that it would be incorrect to draw a conclusion by isolating a few clauses in the MOU. The MOU should be read as a whole, collectively taking into consideration the intention of the MOU.
- As the movement of crane from SML Maharashtra to SML Tamil Nadu would be taxable supply, SML Tamil Nadu would be entitled to avail ITC of IGST charged by SML Maharashtra if all the conditions of Section 16(2) of CGST Act are fulfilled which are stated below:
  - a. SML Tamil Nadu receives tax invoice from SML Maharashtra on monthly basis;

- b. SML Tamil Nadu actually receives service from SML Maharashtra, because only on receiving the cranes on hire charges from SML Maharashtra, can SML Tamil Nadu further sub-lease the cranes to their ultimate customers;
- c. IGST charged by SML Maharashtra is paid into the Government treasury of Tamil Nadu; and
- d. Regular GST returns as applicable are furnished by SML Maharashtra and SML Tamil Nadu.

- In order to verify whether aforesaid conditions are fulfilled, SML Tamil Nadu submitted the documents vide email dated 5 June, 2019 before the Authority for Advance Ruling. In the order passed by the Authority for Advance Ruling at Paras 4.1, 4.2 & 6.3, it is very clearly stated that documents received from SML Tamil Nadu are verified and no issues were raised. Consideration mentioned in the MOU/tax invoice is only for the purposes of complying with GST provisions. The Authority for Advance Ruling, in its order denied ITC of IGST because full payment of consideration is not made by SML Tamil Nadu to SML Maharashtra, by invoking the second proviso to Section 16(2) of CGST Act
- The Authority for Advance Ruling in its order also stated that proviso to Rule 37 of CGST Rules, 2017 will not be applicable to SML Tamil Nadu as transaction between SML Maharashtra and SML Tamil Nadu is not made without consideration. As discussed above, the Authority has erred in concluding that in the instant case, there is a consideration to be paid by SML Tamil Nadu to SML Maharashtra (evidenced by the MOU) and the consideration is specified in the invoices raised by SML Maharashtra on the Appellant.
- As per Schedule I of CGST Act, any activities or transactions between distinct person (i.e. SML Maharashtra and SML Tamil Nadu in this case) will be deemed to be supply, even if made without consideration. The present transaction clearly falls within the ambit of Schedule I of the CGST Act wherein SML Maharashtra supplies services to SML Tamil Nadu without any commercial consideration. Further, for the purpose of

GST compliance and discharging GST, the MOU provides the mechanism to determine the value.

- In terms of Section 31(2) of the CGST Act, it is mandatory for a registered person supplying taxable services to issue a tax invoice, showing the description, value and tax charged thereon. Therefore, in the instant case, since SML Maharashtra is supplying taxable services to SML Tamil Nadu in terms of Schedule I of the CGST Act, it is mandatory for SML Maharashtra to issue a tax invoice showing the value and tax charged thereon. If the interpretation adopted by the Authority were to be adopted, it would lead to absurd situations wherein distinct persons i.e. every branch office of a legal entity would be forced to open separate bank accounts and undertake thousands of bank payment transactions with other distinct persons (branch offices) of the same entity, only in order to avail ITC. It would completely defeat the purpose of introducing the proviso to Rule 37 of the CGST Rules, 2017.
- The Authority for Advance Ruling has erred in concluding that payment needs to be made even for supplies made between distinct persons, only because consideration is specified in the MOU/tax invoice. SML Tamil Nadu has been led to specify the consideration in the MOU/tax invoice and discharge applicable GST, only on account of Schedule I read with Section 31(2) of the CGST Act. If such an extreme view is taken, major FMCG companies with multi-State operations would be greatly burdened with denial of ITC and unwarranted compliances. The legislative intention behind creating the deeming fiction in the proviso to Rule 37 of the CGST Rules, 2017, should also be taken into consideration. If the deeming fiction is watered-down to only apply to transactions between distinct persons where no consideration has been specified on the tax invoice (which would be a non-compliance with Section 31(2) of the CGST Act by itself), it would effectively make the proviso redundant.
- The recent appellate advance ruling pronounced by this authority in the case of M/s. MRF Limited is referred to state that the second proviso to Section 16(2) of the CGST Act is merely an anti-evasion measure introduced in the law and the legislative intention behind introducing the

same, is to ensure that suppliers especially from MSME sector are paid promptly. It is not the intention of the legislator to apply this proviso to transactions between inter-offices as distinct persons. Therefore, transactions between inter-offices as distinct persons cannot be subjected to this proviso. In case of transactions between inter-offices as distinct persons there is no revenue loss to the Government as long as the necessary compliances as per Section 16(2) of CGST Act (other than making payment within 180 days), are made. Therefore, it would be incorrect to deny the admissibility of ITC in the present case when all necessary conditions of Section 16(2) of CGST Act have been satisfied.

- The order has erred in concluding that the up-keepment charges receivable by SML Tamil Nadu are being netted off against the lease/hire charges payable by SML Tamil Nadu and hence full consideration is not being paid. It is clearly mentioned in clause 10 of MOU that "lease/hire" charges payable by SML Tamil Nadu to SML Maharashtra shall be settled by netting off the lease/hire charges receivable by SML Maharashtra with the lease/hire charges payable by SML Tamil Nadu, in the books of accounts of SML as a whole. The Authority has erred by concluding that the up-keepment charges receivable by SML, Tamil Nadu are being netted off against the lease/hire charges payable by SML Tamil Nadu. The up-keepment charges and the lease/hire charges are two separate charges which are not netted off against one another. Rather the up-keepment charges payable by SML Maharashtra are netted off against the up-keepment charges receivable by SML Tamil Nadu and the lease/hire charges payable by SML Tamil Nadu are netted off against the lease/hire charges receivable by SML Maharashtra, by way of book adjustments at an entity level.
- Based on accounting principles, the receivable and payable have to be considered at an entity level and not at a GST registration level, as such book adjustments of netting off are made at an entity level in the books of accounts i.e. the receivable of SML Maharashtra is netted off against the payable of SML Tamil Nadu in the books of accounts of SML. Further, while preparing financial statements, transactions between SML, Maharashtra and SML Tamil Nadu are netted off in books of account and

these transactions do not form part of revenue or expenses/purchases disclosed in financial statements.

- Further, without prejudice to the above submissions, even if one were to agree with the interpretation of the Authority for Advance Ruling wherein the upkeepment charges receivable by SML Tamil Nadu are netted off against the lease/hire charges payable by SML Tamil Nadu in terms of Para 10 of the MOU and accordingly full payment is not being made by SML Tamil Nadu (since the value of upkeepment charges is significantly lower than the lease/hire charges), the proviso to Section 16(2) of the CGST Act read with Rule 37 of the CGST Rules, applies only to cases of failure to pay the value and tax to the supplier and not cases where value paid to the supplier is reduced as a result of mutual settlement between the supplier and the recipient. The reduced payment in the case on hand would not be as a result of failure on the part of recipient to pay value and tax to the supplier, it would rather be as result of the reduced mutual settlement agreed between SML Tamil Nadu and SML Maharashtra by way of the MOC. Hence, when there is no failure on their part to pay the value, this proviso cannot be invoked to deny the credit.
- A reading of the proviso to Section 16(2) of the CGST Act, also indicates that the requirement is to pay to the supplier of goods or services, the amount towards the value of supply along with tax payable thereon within 180 days. The proviso does not specify that entire value of supply has to be paid. The words 'amount towards the value of supply', implies only the amount as agreed between the supplier and the recipient which need not be the entire value of supply. As per the mutual agreement, if such value of supply is reduced, even such reduced payment fulfils the requirement, "amount towards the value of supply". Hence, the payment in the present case (assumed to be netting off the upkeepment charges receivable by SML Tamil Nadu against the lease/hire charges payable by SML Tamil Nadu) has to be construed as in full compliance with the proviso to Section 16(2) of the CGST Act. Accordingly, the input tax credit cannot be denied.
- The definition of consideration under Section 2(31) of CGST Act, provides the scope and ambit for modes of payment. It includes **"any payment**

**made or to be made, whether in money or otherwise".** The term "otherwise" is very wide, and it would include all modes of payment i.e. netting of receivable and payable in books of account, barter, exchange, etc. as well. There is no specific restriction under the CGST Act, which restricts that payment should be made in cash or through bank account only.

- The mode of payment (i.e. netting off) between supplier i.e. SML, Maharashtra and recipient i.e. SML Tamil Nadu, is already agreed well in advance through the MOU (relevant para of MOU is also referred in the order). In such a case, denying ITC of IGST merely by claiming that payment is not made by SML Tamil Nadu to SML Maharashtra would be incorrect and will be against the provision of GST law.
- In the ruling pronounced by the West Bengal Authority for Advance Ruling in the case of M/s. Senco Gold Limited, the Authority for Advance Ruling has provided the following clarification *"The Applicant can pay the consideration for inward supplies by way of setting off book debt. The GST Act and rules made there under does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment, subject to the conditions and restrictions as may be prescribed and, in the manner, specified in Sections 16 and 49 of the GST Act"*.
- In the above ruling, the transaction was between the Applicant and its customers who are neither related persons nor distinct persons, and payment between them was being settled through book adjustment. This ruling has established that the recipient can pay the supplier consideration by way of setting off book debt. Unless the law specifically restricts the recipient from claiming the input tax credit when consideration is paid through book adjustment, credit of input tax cannot be denied on this ground alone. Hence, the proviso to Section 16(2) of the CGST Act would be satisfied in the present case. Therefore, considering the above ruling (though not binding but having persuasive value) and the wide definition of the term consideration under GST law, it is clear that SML Tamil Nadu should be eligible for full input tax credit since the provisions of Section 16(2) of the CGST Act are satisfied.

➤ Payment through adjustment of the books of accounts is a prevalent commercial practice which also finds support in Ind AS 32 which establishes the principles for offsetting financial assets and financial liabilities. Para 42 of Ind AS 32 provides that a financial asset and a financial liability shall be offset and the net amount presented in the balance sheet when, and only when, an entity

a. currently has a legally enforceable right to set off the recognized amounts; and

b. intends either to settle on a net basis, or to realize the asset and settle the liability simultaneously.

Further, para 45 of Ind AS 32 states that a right of set-off is a debtor's legal right, by contract or otherwise, to settle or otherwise eliminate all or a portion of an amount due to a creditor by applying against that amount an amount due from the creditor. Therefore, in this case, the netting off of receivable and payable between the debtor i.e. SML, Maharashtra and the creditor i.e. SML Tamil Nadu, (though both are a part of the same legal entity), would be permissible under Ind AS 32 since the MOU grants a legally enforceable right to set off and clearly indicates both the parties' intention to settle the asset and liability on a net basis. Accordingly, SML, Tamil Nadu should be eligible for full ITC as all the conditions of Section 16(2) of the CGST Act, are being satisfied.

#### PERSONAL HEARING:

5. The Appellant was granted personal hearing as required under law before this Appellate Authority on 10<sup>th</sup> October 2019. The appellant sought adjournment vide their letter dated 27<sup>th</sup> September 2019. Another opportunity was extended on 08.11.2019. The Authorized representatives of the Appellant S/Shri. K.Sivarajan, CA; Nitin Vijaivergia, Abhijit Sawarkar and Vipin Bang appeared for hearing. They handed out a compilation of Flow of Transactions and relevant Statutory Provisions along with additional written submissions, which they reiterated.

#### DISCUSSION:

6. We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. The issue before us for

determination is whether GST paid by the SML Maharashtra on the lease of Cranes, to their distinct person, the appellant, for sub-lease to the ultimate customer is eligible as credit in the hands of the appellant.

7. From the submissions before us we find that with the implementation of GST and the Act providing the supply between the distinct persons of the same PAN but in different states as a Supply under Section 7 readwith Schedule I of the CGST/TNGST Act 2017, the appellant has entered into an MOU with the Head Office of the appellant drawing the modus for the transactions between them and compliance of GST provisions. The HO of the appellant is the title holder of all the cranes, which they lease to the appellant, for further sub-lease by the distinct person. The flow of transactions is illustrated as follows:

Work Order received by the appellant from customer located in TN-----  
Internal Work Order raised on SML, HO by the appellant as per the MOU----  
--Movement of Crane either directly to the customer's place or through depot  
of the appellant----Tax Invoice raised by the SML, HO on the appellant-----  
Tax invoice raised by the appellant on the customer with payment  
instructions(chèque/draft in favour of 'SANGHVI MOVERS LIMITED' ;  
payment can also be made directly to the Account SBI PUNE)----- payment  
made by the customer----Book adjustments made by knocking off receivable  
and payable between SML HO and the appellant-----Tax invoice raised by the  
appellant on SML HO for the up-keepment and maintenance charges.

7.1 The Lower authority in para 6.3 of the ruling analysing the relevant statutory provisions and the modus followed by the appellant has observed as follows:

*.....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 to 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 to Section 16(2) of CGST ACT and Rule 37 of CGST Rules.....*

and has ruled that the appellant is not eligible for the full Input Tax Credit but only to the extent specified in the restrictions as per the second proviso to Section 16(2) of the CGST Act and Rule 37 of CGST Rules

7.2 The appellants have stated that the MOU between the distinct persons was necessitated to adhere to the provisions of GST. The supply between the SML HO and the appellants is taxable as per the deeming provision of Section 7 of the Act read with Schedule I of the Act and therefore the proviso to Rule 37 which provides for full ITC is applicable to their case. The consideration on the tax invoice raised by SML HO on the appellants is approximately 95% of the price charged on the ultimate customer by the appellants. SML HO pays IGST on the value. The receipts and payables are calculated on an entity level and the receivables/ payables between the distinct persons are set off as brought out in the tax invoice raised by the SML HO and Clause 10 of the MOU and setting off of receivables against payables are recognized in the accounting standards. Further, the ultimate customer is directed to make payment in the Bank Account of HO and therefore the entire consideration of value raised by the SML HO on the appellants stands paid. They claim that they are eligible for the entire ITC of the GST paid by SML HO.

8. The relevant Statutory Provisions under GST Act are examined as under:

**LEVY AND COLLECTION OF TAX**

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

*SCHEDULE I [See section 7]*

*ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION*

- 1. Permanent transfer.....
- 2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

**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.

**Rule 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:*

Section 2(31) defines consideration as

*“consideration” in relation to the supply of goods or services or both includes—*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

8.1 From the above Statutory provisions, the following are evident:

- The supply of goods or services to the distinct persons in the course or furtherance of business, even without consideration are taxable supply;
- A registered person shall be entitled to take credit of input tax charged on any supply to him which are used in the course or furtherance of business if he is in possession of a tax invoice, received the goods or services and the tax charged is paid to the Government and the returns are furnished;
- When the recipient fails to pay the supplier the amount towards the value of supply along with tax payable within a period of one hundred and eighty days from the date of issue of invoice, the proportionate credit availed is to be added to his output liability;
- The value of supplies made without consideration as specified in Schedule I of the Act is deemed to have been paid for the purposes of availment of ITC

8.2 Applying the statutory provisions to the case at hand, we find that the Lower authority has examined and held that the supply in this case is one between distinct persons; the appellant is in possession of the Tax Invoice, the goods are sub-leased to the appellant for use in the furtherance of business; tax is paid by SML HO; returns are furnished. The Lower Authority has restricted the ITC to the amount of value set-off, i.e, it is held that the ITC is available only to the extent of payment of value by the appellant to their HO denying the exemption under proviso to Rule 37 of the CGST Rules available to supplies between the distinct persons. Therefore the issue to be decided is whether the appellant is eligible for the ITC of the entire tax paid by SML HO in the stated transactions.

8.3 From the various submissions before us, we find that this is a case which is covered by Schedule I of the CGST Act. The transaction is between distinct persons. The appellant in the tax invoice raised on their customers mentions that the payment to be made either by Cheque/DD in the name of 'SANGHVI MOVERS LIMITED' or directly to the account of SML HO at Pune. The appellant has represented that the receipts and payables are accounted at the entity level only. The HO being distinct person in the eyes of law and the transaction is in the course of furtherance of business, the supply is taxable supply for which SML HO has adopted a value agreed under the 'Pricing' clause of the MOU and paid the tax on the value declared in the Invoice. The proviso to Rule 37, provides for deemed payment of value in such transactions. Even considering that the said proviso does not have application in the case at hand as there is a value stated in the Tax Invoice as held by the Lower Authority, we find no reason to restrict the Input Tax Credit of the tax paid by the SML HO, in the hands of the appellant as it has been substantially brought out that the 'consideration' stands paid to the SML HO either by the customer of the Appellant or by setting off against the payables of the appellant to SML HO, in respect of lease/hire of Cranes, etc which is as per the established accounting principles. Therefore we do not find any reason to restrict the eligibility of ITC credit under Section 16 (2) of the Act, in the case at hand.

9. In view of the above discussions, we modify the ruling of the Original Advance Ruling Authority and rule as under

#### RULING

The appellant is eligible to avail full Input tax credit of tax paid by SML HO on the lease/hire of cranes to them for furtherance of business, subject to other conditions of eligibility to such credit as per Section 16 of CGST/TNGST Act 2017

(T.V.SOMANATHAN)  
Commissioner of Commercial Tax  
Tamilnadu /Member AAAR

(M. AJIT KUMAR)  
Pr.Chief Commissioner of GST & Excise  
Chennai Zone/Member AAAR

**APPELLATE  
AUTHORITY FOR  
ADVANCE RULING**

13 NOV 2019

**GOODS AND SERVICE TAX**

To

Sanghvi Movers Limited

121, chembarambakkam, Chennai Bangalore Road,

Poonamallee, Chennai 600123

/By SPAD/

Copy to

1. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-5.
3. Office of The Authority for Advance ruling, No.1, Greams Road, IV Floor, PAPJM Building, Chennai-06.
4. The Commissioner of GST & Central Excise, Chennai Outer Commissionerate, Newry Towers, No. 2054, 1 Block, II Avenue, 12<sup>th</sup> Main Road, Anna Nagar, Chennai-40
5. The Assistant Commissioner (ST), Poonamallee Assessment Circle, Chennai - 123
6. ~~Master~~ File/ Spare-2.

