

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai –
400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Mr. Rajiv Magoo, Joint Commissioner of Central Tax, (Member)
(2) Mr. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAACB7293DIZQ
ARN Number		AD2703190182651
Legal Name of Applicant		M/s. B. G. Shirke Construction Technology Pvt. Ltd.
Registered Address/Address provided while obtaining user id		72-76, Industrial Area Mundhwa, PUNE-411036
Details of application		GST-ARA, Application No. 42 Dated 09.09.2019
Concerned officer		
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing ; Service Provision ; Office / Sale Office ; Service Recipient
B	Description (in brief)	Applicant, M/s. B. G. Shirke Construction Technology Pvt. Ltd. has its Registered/Corporate Office at Mundhwa, Pune. The "Shirke Group" is engaged in the business of Civil Construction, Structural Engineering, Fabrication & Erection of Transmission Tower Materials, Manufacturing of Post-Harvest Equipment, Ship and Aviation Chartering, etc.
	Issue/s on which advance ruling required	(iii) Determination of time and value of supply of goods or services or both. (vii) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term .
	Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. B. G. Shirke Construction Technology Pvt. Ltd. , the applicant, seeking an advance ruling in respect of the following questions.

1. *Whether the managerial and leadership services provided by the Registered/Corporate Office to its Group Companies can be considered as "supply of service", in terms of Section 7 of CGAT Act, 2017?*

2. *Whether the lump sum amount charged by the Registered/Corporate Office on its Group Companies would be liable to GST under Section 8 of CGST Act, 2017?*
3. *If the aforesaid activities are treated as "supply of service" between distinct and related persons and GST thereon is held to be payable, whether the Applicant can continue to charge certain lump sum amount, as has been done in the past, in terms of second Proviso to Rule 28 of CGST Rules, 2017, as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of Section 17 of CGST Act, 2017, at their respective ends?*
4. *If the aforesaid method of charging certain lump sum amount is not permissible, whether the Applicant can adopt the valuation in terms of the provisions of Rule 31 of CGST Rules, 2017, by arriving at a proportional ratio, based on the total expenses incurred by Registered/Corporate Office for supplying the aforesaid services and turnover of each of the distinct and related persons?*
5. *If the aforesaid method of valuation under Rule 31 of CGST Rules is also not permissible, whether the Applicant can adopt valuation in terms of Rule 30 of CGST Rules, 2017, by allocating related expenses at the Registered/Corporate Office in a reasonable proportion to the distinct and related persons considering turnover of each of them and adding ten percent, which would be at par with 110% of cost of provision of such services?*
6. *If any of the aforesaid method of valuation suggested by the Applicant is not acceptable, what alternative feasible workable method of valuation that can be suggested by the Advance Ruling Authority considering the nature of industry in which the Applicant is engaged in.*
7. *Whether input tax credit of GST paid by the Applicant is admissible to each of the distinct and related person, in a case where their supply of goods or service or both are taxable under GST law?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions made by the applicant, are as under:-

- 2.1 *M/s. B. G. Shirke Construction Technology Pvt. Ltd., the applicant's Registered/ Corporate Office is in Pune. The "Shirke Group" is in the business of Civil Construction, Structural*

Engineering, Fabrication & Erection of Transmission Tower Materials, and Aviation Chartering, etc.

2.2 *Applicant has construction sites in different States & holds separate GST registrations (distinct persons) in each of those States. Applicant also has GST registered Group companies (related persons) engaged in various activities. Further, the Applicant is also holding also ISD registration at Pune (Maharashtra).*

2.3 *The Registered/Corporate Office supplies managerial and leadership services to the aforesaid distinct and related persons in the areas of finance, operation, etc. for which it charges fixed monthly charges on lump sum basis. The charges are at the discretion of the Registered/Corporate Office and not supported by any specific valuation method under Section 15 of CGST Act read with GST Valuation Rules.*

2.4 *Subject services provided by applicant to its Group Companies (distinct and related persons) cannot be considered as "supply of service", in terms of Section 7 of CGST Act, 2017.*

2.5 *As per Section 7(1)(c) of the CGST Act, 2017, the term "supply" includes "the activities specified in Schedule 1, made or agreed to be made with or without a consideration". As per Section 7(2) of the CGST Act, activities or transactions specified in Schedule III would not be treated as supply of goods or supply of services. As per Entry 2 of Schedule 1 of the CGST Act, 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, would be treated as "supply", even if made without consideration. However, as per Entry 1 of Sch. III of the CGST Act, services by an employee to the employer in the course of or in relation to his employment would be neither treated as a supply of goods nor a supply of services.*

2.6 *The activities carried out by the applicant with respect to other Group Companies, amount to supply of services between distinct persons without consideration as per Entry 1 of Schedule I. However, the said activities would not be treated as supply of services by virtue of specific relaxation provided in Entry 1 of Schedule III.*

2.7 *The term "employee" cannot be restricted to employment with the registered person as per Section 2(94) of the CGST Act merely on account of the location from where he renders his employment services. The employment relationship exists between the employee and employer, i.e. legal entity as a whole and not confined to the location of registered person from where the said employee renders services. When an employee renders any services to other registered persons, i.e. distinct persons of the same legal entity, the nature of activities still assumes the character of services by an employee to the employer in the course of or in relation to his employment as he is an employee for the legal entity as a whole and not for any one registered person. Hence, the services rendered by employees towards accounting and other administrative functions pertaining to other units still retains the character of services by an employee to the employer in the course of or in relation to his employment and hence*

shall not be treated as supply of services as per Entry 1 to Schedule III. Hence, GST shall not be applicable on the impugned activities.

2.8 The aforesaid view gets persuasive support from some of the judgments of Hon'ble Supreme Court & Tribunal, although delivered under different context/enactments:

- (a) In the case of **Agencia Commercial International Ltd**, (1982 AIR 1268), the Supreme Court held that a "body corporate and its branches are not distinct and separate entities from each other, that the branches constitute mere components through which the corporate entity expresses itself and that all transactions entered into ostensibly with the branches are in legal reality transactions with the corporate body and that it is with the corporate body that a person must deal directly."
- (b) In the case of **Transport Corporation of India** (1999 Supp (4) SCR 393), the Hon'ble Supreme Court held that "the branch office is only an appendage to the head office and the branches are located in the place or State where the head office is situated or other places outside the States also to measure up to the expansion or diversification of the business or undertaking. Each branch is an off-shoot of the head office and cannot be considered to have an independent entity as all the transactions ultimately funnel into head office and the entirety of transactions of the head office and branches as well are reflected by the head office as one unit. The infrastructure for the maintenance and running all the branches flows from the same capital source and the streams of business by all the units will be ultimately pooled. It is not in dispute that the branches carry on the identical business and transactions. Each branch is a component of the main office and all the branches are miniatures of the main office and as such cannot be considered as separate and independent entities."
- (c) Hon'ble Tribunal in the case of **Milind Kulkarni - 2016 (44) STR 71 (Tri)** held that employees of a branch are the employees of a company-establishment.
- (d) Similarly, in the case of **Franco Indian Pharmaceutical (P) Ltd.** [2016 (42) STR 1057 (Tri)], the Tribunal held that activities carried by the employees deputed from one group-company to other group-company cannot be considered as provision of services of promotion or marketing of the goods manufactured (Business Auxiliary Services) by other group-company. Further, it has been held that if the employer-company who takes employee in its own rolls does not insist on some mark-up or margin being given to it, over and above actual cost, payments received against debit notes by one employer-company upon other employer-companies, do not have character of consideration for any service; they are mere reimbursement of shared costs.

2.9 In view of the aforesaid submissions, Applicant feels that, the impugned services provided by it does not fall under the category of "supply of service" in terms of Section 7 of CGST Act



and GST is not payable, on the lump sum amount charged on its Group Companies, under Section 8 of CGST Act, 2017.

- 2.10 Since the supply of service is between distinct and related persons, "transaction value" under Section 15(1) of CGST Act, 2017, is not available. Therefore, one has to resort to Valuation Rules (CGST Rules) in terms of Section 15(4) of CGST Act, 2017. Provisions of Rule 28 of CGST Rules, 2017, which would be applicable for valuation of the supply of goods or services or both between distinct or related persons. However, there is no "open market value" of such services and/or comparable services and also such services are not further supplied by the recipient, the instant case is not covered under first Proviso to Rule 28 and also Clauses (a) or (b) of Rule 28. Since full input tax credit (ITC) is admissible to recipient, the value declared in the invoice would be deemed to be the open market value of the services. Hence, the Applicant is of the opinion that their existing practice of debiting of value of services through invoices is covered by second Proviso to Rule 28 of CGST Rules, 2017.
- 2.11 In respect of very few cases, where recipient is not eligible for full input tax credit, the Applicant's submissions are as under:

- (a) Since only supply of services is involved in the present case, Applicant can adopt the provisions of Rule 31 of CGST Rules, 2017 by arriving at a ratio, based on total expenses incurred by the applicant on those services and proportionately apportion the same to each of the aforesaid distinct and related persons based on the turnover of each of them, as almost all the distinct and related persons are eligible for full ITC, barring one or two, who will follow the procedure as required under Section 17 of CGST Act, 2017 at their end and, hence, there would not be any loss to the exchequer.
- (b) Alternately, Applicant is of the view that it can adopt valuation in terms of Rule 30 of CGST Rules, 2017, by allocating related expenses at the Registered /Corporate Office in a reasonable proportion to the distinct and related persons considering turnover of each of them and adding ten percent, which can be compared to 110% of cost of provision of such services, as arriving at actual cost of provision of such services is almost impossible.

ADDITIONAL SUBMISSIONS DATED 11.09.2020

- 2.12 The lump sum amounts charged by the applicant to various group companies depends upon the quantum of work involved and the turnover of each of the group companies to whom such supplies are made.
- 2.13 Applicant has classified its supply under Heading (SAC) 9983, which covers "Other professional, technical and business services". However, classification of the services has got nothing to do with the valuation of the same. Applicant's charging of any amount in the



invoices to its group companies/sister units, on lump sum basis, without resorting to any specific calculation method is proper and legal.

2.14.1 Applicant relies on the decision of the Authority for Advance Ruling, Tamil Nadu, in the case of *Specsmakers Opticians Private Limited - 2019-TIOL-245-AAR-GST*. Applicant also relies on the decision of the Authority for Advance Ruling, West Bengal in the case of *GKB Lens Pvt Ltd. - 2018 (13) GSTL 343 (AAR-GST)*. Applicant further relies on the decision of the Authority for Advance Ruling, Maharashtra, in the case of *Kansai Nerolac Paints - 2018 (26) GSTL 257 (AAR-GST)*.

2.14.2 The common conclusion flowing from the said Rulings of AAR/AAAR is that, in case of supplies between distinct persons or related persons if the recipient is entitled to full ITC, the value declared in the invoice would be deemed to be the open market value of the goods or services supplied and the same would be liable to tax.

2.15 In the absence of any prescribed value to be adopted as invoice value for getting covered under second proviso to Rule 28 of CGST Rules, applicant is free to determine any value to be shown in the invoice for supply of services to distinct/related persons. There is no requirement to include all costs, expenses, etc. into the value, in absence of any specific stipulation to that effect in Rule 28.

2.16 Under the GST regime, the concept of revenue neutrality, for supplies between related persons and distinct persons, has been given statutory effect through second Proviso to Rule 28 of CGST Rules, which prescribes that the value declared in the invoice would be deemed to be the 'open market value', as the entire tax paid on invoice value, by the supplier, is available as ITC to the recipients. Hence, applicant's adoption of lump-sum value in the invoices, for the supply of managerial and leadership services to our group companies and/or related persons, is under and in accordance with the second Proviso to Rule 28 of the CGST Rules, 2017, as full input tax credit of such tax is admissible to the recipient-units.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

The submissions made by the jurisdictional officer are as under:-

- 3.1 The impugned services provided by applicant, to its Group Companies can be considered as "supply of service". The Registered/Corporate office is charging to its group companies, amounts for providing managerial and leadership services, hence as per subsection 1(a) of section 7 such supply would be taxable supply.
- 3.2 As per Schedule I, entry no 2, 'supply of services' between distinct persons or related persons is treated as supply even if it is made for without any consideration.
- 3.3 From the provisions of Section 25 of the MGST Act, it is clear that, in the instant case the Registered or corporate office and various other group companies, its various establishment offices situated in various state for carrying out the business operation of the company are

distinct and related persons in light of the aforesaid legal provision and any supply of services made between them whether for any remuneration or not is considered as supply.

3.4 Answer to the applicant's second question depends upon the valuation under the MGST/CGST Act.

3.5 With respect to question number 3, Rule 28 is specifically related to determine the value of supply of goods or services or both between distinct or related persons. As per the second proviso to Rule 28, if the recipients are eligible for full ITC, the invoice value shall be deemed to be the open market value of the goods or services.

3.6 Applicant has also sought clarification regarding method to be adopted for determining the value of supply. In this regard the tax payer has the option to determine the value of supply as per Rule 30 or 31.

3.7 It is clear that the applicant is making supply of services so, as per Rule 30 value can be determined on the basis of cost of provision of such service and as per the proviso to Rule 31 in case of supply of services the applicant may opt for Rule 31 to determine the value of service.

3.8 Applicant has also asked whether, input tax credit of GST paid by them is admissible to the distinct and related person, in a case where their supply of goods or service or both are taxable under GST law. The answer to this question is yes, subject to the provisions of Sections 16 & 17 of the MGST/CGST Act.

3.9.1 Applicant has taken support of the some of the judgments of Hon Supreme Court and Hon. Tribunal. After going through the said judicial pronouncements it is clear that they are not helpful to support the applicants view.

3.9.2 In Agencia Commercial International Ltd, the issue was as to who was authorized to initiate the recovery action, whether the branch office or the head office. Hon. Supreme Court has held that a body corporate and its branches are not distinct and separate entities from each other, that the branches constitute mere components through which the corporate entity expresses itself and that all transactions entered into ostensibly with the branches are in legal reality transactions with the corporate body. This judgment was given in accordance with the provisions of Banking Regulation Act, wherein all contingencies regarding closure or wind up of banks were considered. The MGST/CGST Act treats branch office and head office as distinct persons and all transaction between them are to be brought under the compass of taxation.

3.9.3 Similarly the decision given by Hon. Supreme Court in the case of Transport Corporation of India, regarding employer and employee of the Head office and branch office based on the express provision made regarding the employee and employer under the relevant act. (Employees State Insurance Act, 1948). *"A conjoint reading of Sub-sections 9, 13, & 17 of Section 2, therefore, clearly shows that if the head office/registered office of the appellant is*



controlling its Bombay branch, employees working in its Bombay branch can obviously be treated to be an 'employee' working under the supervision of the principal employer or his agent. Consequently, once such 'principal employer' like the appellant, having head office at Secunderabad in the State of Andhra Pradesh, is covered by the sweep of the Act, automatically employees working in its branches, may be anywhere in India, including the branch at Bombay would get covered by the sweep of the Act".

But no such provision regarding employer or employee is made under the MGST/CGST Act. Hence this judgment is not applicable to this case.

- 3.9.4 Thus in view of the above, managerial and leadership services provided by applicant to its Group Companies can be considered as "supply of service". Value of the supply can be determined as per the Rules as explained above, i.e. either by way of second proviso to Rule 28 or Rule 30 or 31 which shall be in consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Additional submissions made on 26.02.2020

- 3.10 Chapter IV of the CGST Act consisting of Rules 27 to 33 deals with the determination of value of supply. Looking at the nature of transaction as referred in the subject case of applicant, Rules 29, 32 or 33 are not relevant. Rule 28, 30 and 31 are relevant and any of them can be applied in the instant case, as discussed below:-

- 3.11 Rule 28 is specifically related to determine the value of supply of goods or services or both between distinct or related persons. The Rule is reproduced as under:-

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. - The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;*
(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of Rule 30 or Rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

- 3.12 As per clause (a), the value of supply between related or distinct person can be determined on the basis of open market value, if such open market value is available. The open market value is defined as per explanation appended to this Chapter, which is as under:

Explanation.-For the purposes of the provisions of this Chapter, the expressions-

(a) *“open market value of a supply of goods or services or both means” the full value in money, excluding the Integrated Tax, Central Tax, State Tax, Union Territory Tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;*

3.13 If the value of supply of services cannot be determined as per clause (a) then the value can be determined as per clause (b) i.e. the *value of supply of goods or services of like kind and quality;*

3.14 The expression “value of supply of goods or services of like kind and quality” is defined as per explanation to this Chapter, which is as under.

(b) *“supply of goods or services or both of like kind and quality means” any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*

3.15 If the tax payer cannot determine the value by the both above methods then value can be determined as per Rule 30 or 31. But before that, there are two proviso to this Rule, hence the tax payer can determine the value of supply in accordance with any one of the proviso.

3.16 The first proviso to this Rule is not applicable to this case as there is no further supply of these services. As per the second proviso to this Rule in this case, if the recipients are eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services. In this case the branch offices of the applicant are eligible for full set off in most of the cases/occasions, hence the value can be determined as per this proviso. It is pointed out by the applicant that in a few cases where full ITC is not admissible, in such scenario value of supply cannot be determined as per the second proviso to Rule 28. In that case tax payer is having option to determine the value of supply as per any other option available under Rule 28. In case if tax payer is not in a position to determine the value of supply by any of the method prescribed under Rule 28 then applicant can determine the value as per the provisions of Rule 30, which is as under:-

30. Value of supply of goods or services or both based on cost.-Where the value of a supply of goods or services or both is not determinable by any of the preceding Rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

3.17 As per Rule 30, Tax payer has to determine the value of supply on the basis of cost of acquisition of such services as per Rule 30 of the CGST Rule i.e. by allocating related expenses at the Registered/corporate office in a reasonable proportion to the distinct and related persons considering the turnover of each of them and adding ten percent, which can be compared to one hundred and ten percent of the cost of provision of such services or in the case where there is no turnover of a particular branch for a particular period, but there is a



supply of services in such scenario the valuation can be determined on the basis of acquisition of cost of such services.

- 3.18 Tax payer also has the option to determine the value of supply as per Rule 31, which is reproduced as under.

31. Residual method for determination of value of supply of goods or services or both.- Where the value of supply of goods or services or both cannot be determined under Rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this Rule, ignoring Rule 30.

- 3.19 Thus from above, since the tax payer is making supply of services so, as per Rule 30, the value can be determined on the basis of cost of provision of such service.

- 3.20 And as per the proviso to Rule 31 in case of supply of services the supplier may opt Rule 31 for determination of value of service by ignoring Rule 30 i.e it can be determined by using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter.

04. HEARINGS

- 4.1 Preliminary hearing was held on 17.12.2019. Shri M. H. Patil, Shri Kiran Chavan and Ms. Manada Biradare, Advocates and Consultants from M/s. CEN-EX SERVICES, duly authorized representatives, appeared and requested for admission of their application. Jurisdictional Officer Sh. V. K. Magar, Deputy Commissioner of S.T.(E-623) LTU, Pune also appeared and made written submissions.

- 4.2 Application was admitted and called for final hearing on 03.03.2020. Shri M. H. Patil, Shri Kiran Chavan Advocate and Consultants from M/s. CEN-EX SERVICES authorized representative and Shri K. M. Thatte, Senior Vice President (Finance) appeared, made oral and written submissions. Jurisdictional Officer Shri V. K. Magar, Deputy Commissioner of S.T. (E-623) LTU, Pune appeared and made written submissions. Hearing was also held on 08.12.2020. The authorized representative of the applicant, Smt. Padmavati Patil, Advocate and K. M. Thatte were present. Jurisdictional officer Shri. Kiran Devare, Deputy Commissioner of State Tax, (E-623), Pune Division was present. The authorized representative and Jurisdictional Officer made submissions.

- 4.3 Final online e-hearing was also held on 27.07.2021. The authorized representatives of the applicant, Smt. Padmavati Patil, Advocate and Shri. Sandip Gund, Senior Manager were present. Jurisdictional officer Shri. Kiran Devare, Deputy Commissioner of State Tax, (E-623), Pune Division was present. The authorized representative and Jurisdictional Officer again made their submissions.

- 4.3 We heard both the sides.



05. DISCUSSIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, written and oral contentions made by both, the applicant and jurisdictional officer at the time of hearings.
- 5.2 Applicant, a Registered/Corporate Office, supplies managerial and leadership services to its branch offices and group companies, which are distinct and related persons, respectively and receives fixed monthly charges from each of the distinct and related persons.
- 5.3 The first question raised by the applicant is whether the subject services supplied by them can be considered as "supply of service" in terms of Section 7 of CGST Act, 2017. The applicant is of the opinion that the supply of services to their group companies and branches would not be treated as supply of services by virtue of specific relaxation provided in Entry 1 of Schedule III which states that services by an employee to the employer in course of or in relation to his employment shall be neither treated as a supply of goods nor a supply of services. Thus it appears that the applicant is treating its group companies and its other sites registered in different places as its employees, in support of which they have cited a few case laws. It would not be out of place to mention that the applicant has also submitted that their group companies are related persons and their site offices as distinct persons.
- 5.3.1 Section 7(1)(c) of the CGST Act states that the activities specified in Schedule I to the CGST Act, shall be treated a supply of goods or services, even if made without consideration. As per Schedule I, Entry No. 2, "Supply of goods or services or both between related persons or between distinct persons, as provided in Section 25, when made in the course or furtherance of business will be activities to be treated as supply even if made without consideration.
- 5.3.2 The only reason, the applicant feels that such services are not taxable because they are treating their group companies as well as their site offices as employees.
- 5.3.3 As per the Merriam Webster Dictionary an Employee *is a person employed by another usually for wages or salary.*
As per the Cambridge Dictionary, an employee *is someone who is paid to work for someone else.*
- 5.3.4 In the subject case the site offices/group companies cannot be treated as persons who are employed by the applicant. The site offices are independent offices separately registered under the GST Laws. Similarly the group companies are also separately registered under the GST Laws and since both the site offices as well as the group companies cannot be treated as employees, the applicant cannot get the benefit of Entry No. 1 to Schedule III. The supply of services by the applicant will be covered under Entry No. 2 to Schedule I and is therefore taxable under GST Laws.
- 5.3.5 The applicant has cited a few case laws in support of their contention that there is an employer employee relationship between them and their group companies/site offices.

- 5.3.6 In the case of Agencia Commercial International Ltd, as rightly submitted by the jurisdictional officer, the judgment was given in accordance with the provisions of Banking Regulation Act, wherein all contingencies regarding closure or wind up of banks are considered. However, as per the CGST Act, branch offices and head office are distinct persons and all transaction between them are to be brought under the GST net and therefore this case law is not applicable in the present situation.
- 5.3.7 The decision given by Hon'ble Supreme court in the case of Transport Corporation of India is based on the provisions made regarding the employee and employer under the Employees State Insurance Act, 1948 and is not applicable to the present case.
- 5.3.8 In the case of Milind Kulkarni, we find that the issue was whether reimbursements made to Overseas Branch Office by the Head Office in India were liable to service tax, under reverse charge mechanism for 'business auxiliary services' rendered by the overseas branch to the Head office. The facts of this case are different from facts of subject case and therefore the said decision is not applicable to the present case.
- 5.3.9 Further, in the case of Franco Indian Pharmaceutical (P) Ltd., the issue in brief was that the appellant company and its three group companies were involved in manufacturing pharmaceutical products and since the group companies had no marketing network for selling their products, appellant's employees were sent on deputation to the group companies for marketing purposes for which the appellant recovered payments in the form of debit notes from their group companies. Revenue held such amounts received, to be taxable under the category of Business Auxiliary Services. The Hon'ble Tribunal held that, such amounts recovered will merely represent reimbursement of shared costs. We find that the facts of this case are also not at all similar to the facts of the subject case.
- 5.4 The second question raised is whether the lump sum amount charged on its Group Companies would be liable to GST under Section 8 of CGST Act, 2017. In view of the discussions made in 5.3.1 to 5.3.9 above, we hold that, the applicant will have to pay GST on the lumpsum amount charged by them to their Group Companies.
- 5.5 Question Nos. 3 raised by the applicant pertains to whether the Applicant can continue to charge certain lump sum amount, as has been done in the past, in terms of second Proviso to Rule 28 of CGST Rules, 2017, as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of Section 17 of CGST Act, 2017, at their respective ends.
- 5.5.1 Chapter IV of the CGST Rules, consisting of Rules 27 to 35 has been framed to determine the Value of Supply in certain cases. We find that Rules 27, 29, 31A to 35 are not applicable in the subject matter.



5.5.2 Rule 28 is applicable to arrive at the value of supply of goods or services or both in case of such supplies between distinct or related persons, other than through an agent. Rule 28 is reproduced as under:-

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

5.5.3 The applicant has submitted that there is no "open market value" of such services and/or comparable services and also such services are not further supplied by the recipient, the instant case is not covered under first Proviso to Rule 28 and also Clauses (a) or (b) of Rule 28.

5.5.4 The applicant has also submitted that most of their service recipients are eligible for full input tax credit and therefore, the value declared in the invoice would be deemed to be the open market value of the services. We agree with the contention of the applicant that they may resort to valuation under Rule 28 of the CGST Rules, in respect of transactions with related/distinct persons who are eligible for full input tax credit as per the second proviso to Rule 28 of the CGST Rules, 2017.

5.6.1 The fourth question raised by the applicant is if the method of charging certain lump sum amount is not permissible, whether the Applicant can adopt the valuation in terms of the provisions of Rule 31 of CGST Rules, 2017, by arriving at a proportional ratio, based on total expenses incurred by Registered/ Corporate Office for supplying the aforesaid services and turnover of each of the distinct and related persons.

5.6.2 In this connection, since it is held that the applicant may resort to valuation under Rule 28 of the CGST Rules, the said question number four is not taken up for discussion. Further, for the same reason question number five also is not being taken up for discussion.

5.7.1 The sixth question raised by the applicant is, what alternative feasible workable method of valuation can be suggested by this Authority considering the nature of industry in which the Applicant is engaged in.

- 5.7.2 We observe that, as per the provisions of Section 97 of the CGST Act, the matters on which advance ruling can be sought includes determination of time and value of supply of goods or services or both. The sixth question actually is asking this authority for suggestions regarding the method of valuation to be adopted by the applicant. We find that this question does not relate to determination of value of supply of goods or services or both, rather the question is asking this authority to suggest procedures to be followed by the noticee. The question does not fall under the purview of Section 97 of the CGST Act, 2017 and is therefore not answered.
- 5.8.1 Finally, the applicant has also asked whether input tax credit of GST paid by the Applicant is admissible to each of the distinct and related person, in a case where their supply of goods or service or both are taxable under GST law.
- 5.8.2 Such questions may be raised only by the concerned recipient of supply of services and not by the applicant. Hence, we are of the opinion that this authority is not allowed to answer the question raised by the applicant, being out of the purview of the provisions of the CGST Act.
06. In view of the above discussions, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 42/2019-20/21-22/B- 56

Mumbai, dt. 09.09.2021

For reasons as discussed in the body of the order, the questions are answered thus –

- Question 1.** Whether the managerial and leadership services provided by the Registered/Corporate Office to its Group Companies can be considered as "supply of service", in terms of Section 7 of CGAT Act, 2017?
Answer:- Answered in the affirmative.
- Question 2.** Whether the lump sum amount charged by the Registered/Corporate Office on its Group Companies would be liable to GST under Section 8 of CGST Act, 2017?
Answer:- Answered in the affirmative.
- Question 3.** If the aforesaid activities are treated as "supply of service" between distinct and related persons and GST thereon is held to be payable, whether the Applicant can continue to charge certain lump sum amount, as has been done in the past, in terms of second Proviso to Rule 28 of CGST Rules, 2017, as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of Section 17 of CGST Act, 2017, at their respective ends?
Answer:- Answered in the affirmative.
- Question 4.** If the aforesaid method of charging certain lump sum amount is not permissible, whether the Applicant can adopt the valuation in terms of the provisions of Rule 31 of CGST Rules, 2017, by arriving at a proportional ratio, based on the total expenses

incurred by Registered/ Corporate Office for supplying the aforesaid services and turnover of each of the distinct and related persons?

Answer:-

Not answered in view of the discussions made above.

Question 5. If the aforesaid method of valuation under Rule 31 of CGST Rules is also not permissible, whether the Applicant can adopt valuation in terms of Rule 30 of CGST Rules, 2017, by allocating related expenses at the Registered/Corporate Office in a reasonable proportion to the distinct and related persons considering turnover of each of them and adding ten percent, which would be at par with 110% of cost of provision of such services?

Answer:-

Not answered in view of the discussions made above.

Question 6. If any of the aforesaid method of valuation suggested by the Applicant is not acceptable, what alternative feasible workable method of valuation that can be suggested by the Advance Ruling Authority considering the nature of industry in which the Applicant is engaged in.

Answer:-

Not answered in view of the discussions made above.

Question 7. Whether input tax credit of GST paid by the Applicant is admissible to each of the distinct and related person, in a case where their supply of goods or service or both are taxable under GST law?

Answer:-

Not answered in view of the discussions made above.



**RAJIV MAGOO
(MEMBER)**

**T. R. RAMNANI
(MEMBER)**

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr.Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.