

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD, CHENNAI – 600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G. Venkatesh, I.R.S Member/ Additional Commissioner,
Office of the Principal chief Commissioner of GST & Central Excise, Chennai -34
and
2. Tmt. Latha. K. M.Sc., (Agri.), Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 43/AAR/2021 DATED: 30.11.2021

GSTIN Number, if any / User id		33AADCN6937H1ZD
Legal Name of Applicant		NEW PANDIAN TRAVELS PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	1078-B, 19 th Main Road First Block, Anna nagar, Chennai. 600 040	
Details of Application		GST ARA- 01 Application Sl.No.20/2021 ARA dated: 29.06.2021
Concerned Officer		State: Assistant Commissioner(ST) Amaidakarai Assessment Circle Centre: Chennai North Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Supply of Service.
B	Description (in Brief)	Passenger transportation services by motorized taxi within or between urban and suburban areas; chauffeur-driven car-hire services; passenger transportation services by non-scheduled vehicles with Driver; Rental of Cars with operators for a period of time depending on distance. Providing transportation of passenger service to SEZ under LUT as 'Zero rated' supply.

Issue/s on which advance ruling required	<ol style="list-style-type: none"> 1. Classification of goods and/or services or both 2. Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	<ol style="list-style-type: none"> 1. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as INPUT TAX CREDIR (ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017? 2. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017. 3. Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?

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. New Pandian Travels Private Limited , No. 1078-B, 19th Main Road First Block, Anna nagar, Chennai. 600 040 (hereinafter called the Applicant) is registered under the GST Vide GSTIN 33AADCN6937H1ZD. They have sought Advance Ruling on the following question:

1. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as INPUT TAX CREDIR (ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017?
2. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017.
3. Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are engaged in transporting passengers as a Rent-a-cab operator by providing the Motor Vehicle on hire or rental basis either directly to passengers or to the organizations and they have establishments at Chennai, Bengaluru, Vijayawada, Hyderabad and other places that are duly registered under GST law. They are in the service sector for more than a decade and contribute significant revenue to the exchequer. The service provided by them is Rent-a Cab operator and classified basically under SAC: 996601. They have opted for payment of GST at the rate of 5%(2.5% + 2.5%) by Sl.No.8(vi) of Notification

No.11/2017-CT Rate dated 28th June, 2017 and are not availing ITC on goods/services. They buy Motor Vehicles of capacity not exceeding 13 including Driver and use it to provide the taxable service. They avail ITC on such 'Motor Vehicles'. However, where goods/services/capital goods commonly used in taxable supplies including zero rated supplies and supplies under the said Notification they avail ITC and reverse ITC as per the provisions of CGST Rules, 2017 where they are used for exempted supplies. The Applicant supply services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT which is deemed as taxable supply and hence avails ITC

2.2 The applicant has stated that Section 17(5)(a) provides that ITC is blocked on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: —

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles

Section: 17(5)(a)(A) permits ITC where the Motor Vehicle of capacity up to 13 persons is used for further supply of such Motor vehicles. Providing Motor Vehicle on Lease or Hire or rental basis is a 'supply' within the scope of 'Supply' u/s 7(1) (a) of CGST Act, 2017, since the term 'supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, **lease** or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, leasing of the Motor Vehicles to organization is a 'supply; and it is also a 'taxable supply' u/S 2(108) of CGST Act, 2017. Therefore, the law allows ITC where the Vehicle is rented or leased or hired.; Section 17(5)(a)(B) is not distinguishing between Motor Vehicles given on rental or hiring or leasing or in any other manner. It allows ITC where the Motor vehicle is used to transport passengers. The Applicant's Motor Cars are registered with Regional Transport Office [RTO] as Public vehicle to carry passengers. The employees of an organization transported in the Motor vehicle are also 'passengers'.; Further, Providing Motor vehicles to transport the employees of the organization is also transportation of passengers during the journey. The above provision intends to allow ITC on Motor Vehicles who

necessarily need motor vehicle to provide service. The supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and hence ITC is admissible on Motor Vehicles procured and used for supply to SEZ and no requirement of reversal of any ITC.

2.3 The applicant has referred Explanatory Notes to the Scheme of Classification of Services notified by CBIC and stated that the service head (Four Digit Code) dealt by the Explanatory notes is "9964- Passenger transport services". The SAC 996411, 996412, 996413 & 996414 are only sub headings and Tariff items under the heading 9964. Section 17(5)(a)(B) allows ITC on motor vehicles used for making the taxable supply of 'transportation of passengers'. Therefore, ITC provision is not distinguishing between a service provider of transporting passengers directly or transporting employees of an organization by hiring or letting. The applicant has referred the rulings in the case of M/s. Narsingh Transport by the AAR GST Madhya Pradesh, wherein it is ruled that the activities carried by the said Applicant regarding supply of motor vehicles on monthly lease rent plus Goods & Service Tax as applicable to their customer under a proper agreement properly satisfies the conditions laid down under Section 17(5) (a) (i) (A) before the amendment and under subsection 5(a)(A) after the amendment to make it eligible for availment of input tax credit on motor vehicle for the Tax paid by it while acquiring the said vehicles. Further the Ruling said it is necessary to mention here that the cars, which the applicant intends to lease, or has already leased, should be registered with the transport authority in the capacity of commercial use. In case the vehicle is owned and used by the Applicant for his own use, the facility of ITC shall cease to be available to them.

2.4 The applicant has further stated that Classification of services and SAC are for determining the Tariff rate of tax and not for any other purpose.; Section 17(5)(a) is not based on SAC and not using any words verbatim of SAC description. The three Judges Bench of Hon'ble Supreme Court of India in the case of Commissioner v. Sandan Vikas (I) Ltd., held that Rules of Interpretation of the Central Excise Tariff may not be applicable if the notification (exemption notification) commands and require a different understanding. Holding that rules or principles of interpretation are always subject to context and are not binding commands. Therefore, SAC cannot be the basis for allowing ITC on 'Motor vehicles' and ITC entitlement is to be purely determined on the basis of words used in the ITC provisions. In this connection, they have relied on the decisions of Hon'ble Supreme Court of India in Keshavji Ravji & Co. v/s. CIT - [(1990)

183 ITR 1 (SC); Pandian Chemicals Ltd. v/s. CIT – [(2003) 262 ITR 278 (SC); Krishi Utpadan Mandi Samiti v. UOI (2004) 267 ITR; Coal Mines Officers' Association of India v. UOI (2004) 266 ITR 429 (Cal.); Vidarbha Irrigation Dev. Corpn. v/s ACIT [(2005) 278 ITR 521 (Bom)]; CIT v/s. Vadilal Lallubhai [(1972) 86 ITR 2 (SC)]; ICAI vs. Price Waterhouse, (1997) 90 Comp. Case 113, 140, 141 (SC); State of West Bengal vs. Scene Seven P. Ltd. AIR 2000 SC 3089, 3094; Harbajan Singh vs. Press Council of India (2002) 3 SCC 722, 727; District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496.; H.H. Lakshmi Bai v/s. CIT - [(1994) 206 ITR 688, 691 (SC)]; Hansraj & Sons vs. State of J & K (2002) 6 SCC 227, 237-39. They have further stated that in any particular provision where the statutory language is plain or straight and its meaning is apparently clear, there is no scope of adding or deleting any words. By applying the maxim 'expressum facit cessare facitum', when there is express mention of certain things, then anything not mentioned is excluded. The applicant, has therefore contended that the words 'transportation of passengers' used in Section 17(5)(a)(B) must be read literally without taking any recourse to SAC classifications and ITC is to be allowed on Motor Vehicles subject to the provisions contained in CGST Rules, 2017. Further, the terms 'further supply of such motor vehicles' has to be read in conjunction with Section 7 of CGST Act, 2017 and supply of motor vehicles on lease or rental or hire basis is a taxable supply and hence the ITC is allowable on Motor Vehicles not exceeding 13 persons in terms of Section 17(5)(a)(A) of CGST Act, 2017. Where the Applicant leases or hires or rents the Motor Vehicles to SEZ, it is 'zero rated' supply and by filing LUT, the Applicant is allowed to provide the service without payment of IGST as provided in the GST law.

3.1 Due to the prevailing pandemic situation and in order not to delay the proceedings the applicant was addressed through the Email address mentioned in their application to seek their willingness to participate in the hearing in digital mode. The applicant consented and the hearing for the admission of the application was held on 05.10.2021. The Authorised representative, Shri. S.Natarajan, Cost Accountant, appeared for the hearing virtually and reiterated their submissions. He stated that the applicant supplies cars to corporate clients such as TCS, by leasing the motor vehicles. They are leasing out vehicles with seating capacity of less than & above 13 passengers. The applicant was asked to submit copies of agreement covering both DTA & SEZ units, invoice copies, Documents for renting to SEZ. The applicant was asked whether the Motor cars are capitalized in their book of accounts, to which the Authorised representative replied that Motor Cars are capitalized in their book of accounts excluding the GST element.

3.2 In pursuance of the virtual personal hearing aforesaid, the applicants submitted the following documents as instructed by the members of the authority:

1. Photo copy of Staff Transport services agreement entered between M/s New Pandian Travels Private Limited and M/s Fidelity Business Services India Private Limited operating in SEZ.
2. Sample Invoice copies (Two Nos.) raised in the name of Fidelity Business Services India private Limited having zero rate of GST against LUT
3. Photocopy of Staff Transport services agreement entered between New Pandian Travels Private Limited and Amazon Development center India Private Limited operating in DTA.
4. Sample invoice copies(Two Nos.) raised in the name of Amazon Development Centre India Private Limited charging 5% GST under Notification No.11/2017-CT (Rate) dated 28.06.2017

3.3 On perusal of the above documents, it was found that the document pertaining only to staff transportation services has been furnished therefore a notice dated 02.11.2021 was issued calling for the documents in respect of leasing activity being undertaken by them. The applicant vide their letter dated 03.11.2021 received on 10.11.2021 stated as follows:

- In the agreement with the corporate client viz., M/s. Amazon Development India Pvt Ltd., as per Schedule-1 with heading "Scope of Work – Fixed Monthly Packaged Model", the Scope of work is that the Vendor/Contractor/Lessor shall provide minimum fleet of 150 vehicles which are reliable, safe, well-maintained, efficient, Air Condition and prompt transportation services to transport Amazon Associates from their home or Nodal points to the Amazon business premises and to any other
- The agreement is to lease 150 Motor Vehicles to M/s. Amazon Development India Pvt Ltd and the Corporate Client, will use the vehicle for staff transportation
- The Vendor/Contractor/ Lessor is leasing the Motor Vehicle to the Corporate clients/Lessee and the Corporate Client, in turn are providing the service of transportation to their staff. The Vendor/ Contractor/ Lessor has no right to identify the staff or decide the pick and drop points which are exclusive right of the Lessee. The agreement is clear that they are leasing or renting the motor vehicle to Corporate clients and not the service of staff transportation. It is

further clarified that the terms leasing or renting are interchangeable used as cognate expressions.

4. The State Jurisdictional authority who has the administrative jurisdiction over the applicant vide letter Rc.No. 422/A4/2021 dated 19.08.2021 has stated that no proceedings are pending against the taxpayer in the assessment circle and furnished their comments as follows:

- Section 17(5)(a)(A) of CGST Act, 2017 allows ITC of GST paid on purchase of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), only when the taxable person makes further supply of such motor vehicles. The applicant in this case is a service provider, who provides service of renting/leasing motor vehicles. The taxable outward supply in this case does not include further supply of such purchased motor vehicles. Hence the applicant is **ineligible to avail ITC** on motor vehicles as per section 17(5)(a)(A) of CGST Act 2017.
- Section 17(5)(a)(B) of CGST Act, 2017 allows ITC of GST paid on purchase of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), only when the taxable person uses them to provide supply of transportation of passengers. The applicant in this case provides supply of renting cabs and motor vehicles classified under SAC 996601(as stated by the applicant). There is a difference between supply of transportation of passengers (classified under SAC 9964) and renting of motor vehicles (classified under SAC 9966). Even though the motor vehicle is eventually used for the transportation of passengers, the service rendered by the applicant is not eligible to avail ITC under Section 17(5)(a)(B) of CGST Act, 2017 as the applicant is not directly engaged in the transportation of passengers. Moreover since the applicant pays 5% GST in forward charge basis for the supply of renting motor vehicles, as per Sr. No. 10 of **Notification 11/2017 - CTR dated 28th June, 2017**, there is restriction that credit of input tax charged on goods and services used in supplying the service should not been taken. On the above observations, it could be stated that the applicant is **ineligible to avail ITC** on motor vehicles as per section 17(5)(a)(B) of CGST Act 2017.

➤ According to Section 7(5)(b) read in conjunction with section 5(1) of IGST Act 2017, supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated as a supply in the course of interstate trade or commerce and leviable to tax under IGST Act. Also in accordance with Section 16(1) of IGST Act 2017, supply of goods or services to SEZ developer or SEZ unit is classified as “Zero rated supply”. In addition, section 16(3)(a) of IGST Act 2017 enables a registered person to make zero rated supply under LUT without payment of IGST. Hence from the above observations, the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is considered as taxable supply under IGST Act. Section 17(5)(a) of the CGST Act 2017 does not provide any exceptions for the supplier to avail ITC based on the recipient of the taxable supply. Since the applicant in this case does not provide the taxable supply covered under 17(5)(a)(A) or (B) or (C), irrespective of the recipient of the service (in this question, the recipient is SEZ), the supplier(ie the applicant) is **ineligible to avail ITC** on motor vehicles procured and used commonly for such supply to SEZ.

5. The Centre Jurisdiction authority vide their letter File No. GEXCOM/TECH/MISC/1921/2021-TECH-O/o-Pr Commr-CGST- Chennai (N) dated 15.07.2021 has informed that there is no pending proceedings in respect of the applicant.

6. We have carefully examined the facts & contentions filed along with the application, submissions made during the hearing and thereafter and the submissions of the Jurisdictional authorities. We find that the applicant has stated to be engaged in transporting passengers as a Rent-a-cab operator by providing the Motor Vehicle on hire or rental basis. The applicant has sought ruling on the following questions:

1. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as INPUT TAX CREDIR (ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017?
2. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire

will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017.

3. Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?

The above questions are on the admissibility to credit of GST Paid on the goods used for provision of services and determination of whether the supply made under LUT is a 'taxable supply'. As the above are within the ambit of this authority, the application is admitted for pronouncement of Ruling.

7.1 From the submissions, it is seen that the applicant has stated that they are engaged in transporting passengers as a Rent-a-cab operator by providing the Motor vehicle on hire or rental basis either directly to passengers or to the organizations. They have classified the supply under SAC 9966 and have opted for payment of GST @5% by Sl.No. 8 (vi) of Notification No. 11/2017-CT (Rate) dated 28th June 2017 and are not availing ITC on goods/services. The applicant has contended that providing Motor Vehicles on Lease or Hire or rental basis is a 'supply' within the scope of 'Supply' u/s 7(1) (a) of CGST Act 2017 and therefore leasing of the Motor Vehicles to Organization is a 'Supply' which stands excepted from the restriction to avail credit specified under Section 17(5)(a)(A) of the Act. They have further contended that Section 17(5)(a)(B) is not distinguishing between Motor Vehicles given on rental or hiring or leasing or in any other manner; it allows ITC where the Motor Vehicle is used to transport passengers. They have relied on the decision of AAR GST Madhya Pradesh in the case of M/s. Narsingh Transport. The applicant has relied on various jurisprudence and have stated that Classification of Services and SAC are for determination of the Tariff rate and not for any other purpose; the need of interpretation arises only when the words used in the statute are on their own term, ambivalent and do not manifest the intention of legislature. The applicant has furnished copy of Agreements entered with Amazon Development Centre (India) Private Limited dated 23rd October 2019; M/s Fidelity Business Services India Private Limited; copy of Invoice No. NPTPL00160202122 dated 01.07.2021 raised on Fidelity Business Services India Private Limited; Invoice No. NPTPL/0178/21-22 dated 07.07.2021 raised on M/s. Amazon Development Centre India Pvt Ltd.

7.2 From the copy of the agreements furnished by the applicant, the following are seen:

- The applicant has entered into a Master Service Agreement effective as of 1st November 2019 and the relevant Work Order effective 26th July 2019 is made a part of the Master Services Agreement
 - Services as per Work Order effective 26th July 2019 in respect of Amazon is that the applicant is to provide 'Staff Transport' related services as described under Schedule 1 and 2 of the Agreement.
 - Description of Scope of Work in Schedule-I is that the applicant has to provide minimum fleet of 150 vehicles of specified conditions to transport Amazon Associates from their home or Nodal points to the Amazon business premises and to any other location as Amazon may desire. The payment for the service provided is based on a 'Fixed Monthly Packaged Model', wherein a fixed amount for 1500Km/12 hrs for a month and additional charges for Extra KM/Extra Hour is agreed
 - Description of Scope of Work in Schedule-II is that the applicant has to provide a fleet of vehicles of specified conditions to transport Amazon Associates from their home or Nodal points to the Amazon business premises and to any other location as Amazon may desire. The payment for the service provided is based on a 'Trip based Model' wherein payment is slab-based rates depending on the diesel price, Kms and Hours. The invoice is to be raised on a monthly basis
 - In respect of services to be provided as per both Schedule-I and Schedule-II, the applicant is to extend vehicles of agreed standards with their drivers who are to be of the desired standards-etiquettes, Experience, etc agreed upon. The route will be given by Amazon and the applicant has to ensure adherence.
- The applicant has entered into 'Staff Transportation Services Agreement' with M/s. Fidelity Business Services India Private Limited dated 18th May 2017. From the various clauses of the agreement and the Exhibits of the Agreement, the following are observed:
 - The applicant is to provide the vehicles of varying capacities , viz., 4+1 Seater; 8+1 Seater and 12+1 Seater with and without A/C for Normal Operation on Trip Basis.
 - The charges are paid on Rate/Trip basis. The trip is defined in the agreement.

- The vehicles are to be provided with the agreed standards with the drivers of set standards agreed upon.

The applicant has furnished copies of Invoice No. NPTPL00160202122 dated 01.07.2021; NPTPL00296202122 dated 01.09.2021 raised on Fidelity Business Services India Private Limited, wherein it is seen that the billing is based on the vehicle details and trips/trip rate and the SAC mentioned is 9966. They have also furnished copies of Invoice No. NPTPL/0178/21-22 dated 07.07.2021 and NPTPL/0260/21-22 dated 10.08.2021 raised on M/s. Amazon Development Centre India Pvt Ltd, wherein it is seen that the billing is on the 'Base Amount' , 'Toll Amount' and the SAC mentioned is 9966.

7.3 The applicant has contended that activity as per the Scope of Work under Schedule I of their agreement with Amazon, is to supply vehicles for hire/lease/rentals and the same is used by the Vendor in turn to provide the services of transportation to their staff. They have further stated that the activity carried out as per the Schedule-II of the agreement with Amazon and that with Fidelity Business services are 'Staff Transportation services'.

7.4 From the various clauses of the agreements before us, it is seen that the activity undertaken by the applicant is supplying services of car hire/rentals with the drivers and the recipient uses the services received for the transportation of their staff, Associate, etc. When in respect of Schedule-I of the agreement with Amazon, the payment is made per vehicle- wise as a 'Fixed Monthly Packaged Model', the payment is calculated based on vehicle-wise/Trip-wise in the case of Fidelity Business. The terms of service to be extended in all such agreements/schedules are supply of vehicles of certain standards, fixed with tracking accessories/panic buttons & qualified drivers. The supply is restricted to the Vehicle with the Drivers. The usage, i.e., Trip Schedules, routes, etc are done by the Transport team of the Vendor. The applicant is responsible for supplying the services of 'Rent-a -cab', wherein the vehicle with the driver is supplied to the Vendor, who uses such services received from the applicants for the transporting requirement of their staff/officers/ Associates. The intention of any agreement is to be understood by reading the entire agreement, as held by the Hon'ble Supreme Court. Thus, reading the full agreement clearly shows that the supply extended is only supply of services of renting/hiring of vehicles with operator classifiable under "SAC 9966 - 'Renting of Vehicles with Operators'". This stands established by the

fact that the applicant in their invoices raised on Amazon and Fidelity, copies of which are provided before us, have mentioned the SAC as 9966.

8.1 With the above facts, the relevant statutory Provisions of Section 17 (5) (a) of the CGST/TNGST Act 2017 is examined. Section 17(5)(a) of CGST Act 2017 reads as follows:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;”

From the above, it is seen that Input Tax Credit is not available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver)[hereinafter referred to as ‘vehicles’] as per S. 17(5)(a) with the exceptions. The applicant has sought the applicability of the exception at (A) and (B) to their supply and thereby their eligibility to ITC of the Motor Vehicles bought by them and used for the supply of renting/hiring to the vendors as per the agreements furnished before us.

8.2 The exception provided at S. 17(5)(a)(A) is that the ITC in respect of Motor vehicles having approved seating capacity of not more than thirteen persons are available when they are used for making further supply of such motor vehicles. The contention of the applicant is that they are buying and using the vehicles for supplying services of ‘Renting of Vehicles with Operators’ and the same is ‘further supply of such vehicles’ in as much as ‘Supply’ as defined under Section 7 of the Act includes all forms of supply of goods or services such as rental, lease for a consideration in the course of furtherance of business. The Provision is clear in that, the ITC is eligible in cases of ‘further supply of such motor vehicle’. In the case at hand, the supply made by the applicant to the vendors as per the agreements are services of ‘Renting/hiring of such Motor Vehicles with the Operators’ and ‘such motor vehicles’ are not supplied i.e., the activity of the applicant is that he uses the

vehicles bought by him for supplying services of hiring of such vehicles with the operators under his Payroll/responsibility and the supply is not a 'further supply of such motor vehicles' per-se. From the above, it could be construed that Section 17(5)(a)(A) of CGST Act, 2017 allows ITC of GST paid on purchase of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), only when the taxable person makes further supply of such motor vehicles. The applicant in this case is a service provider, who provides service of renting/leasing motor vehicles. The taxable outward supply in this case does not include further supply of such purchased motor vehicles. Hence the applicant is **ineligible to avail ITC** on motor vehicles as per section 17(5)(a)(A) of CGST Act 2017 and Q.No. 1 is answered in Negative.

8.3 The exception provided at S. 17(5)(a)(B) is that the ITC is respect of Motor vehicles having approved seating capacity of not more than thirteen persons are available when they are used for making the taxable supplies of 'transportation of passengers'. In the case at hand, from the various clauses of the agreement it is seen that the applicant is obligated to supply on rental/hire basis vehicles of particular standards with the drivers to their vendors. The vendors of the applicant uses the services received from the applicant and undertakes the transport related activities through the in-house transport team which decides the route, nodal points for transport, staff to be plied, modalities for such trips(escort requirement)etc. Therefore, it is evident that the supply made by the applicant is rental/hire of such vehicles and the activity of transportation of employee/associates is undertaken by the Vendor. Thus, in as much as the activity undertaken by the applicant is only renting/hiring of the Motor Vehicles with the operators and not undertaking transportation of passengers, the exception at S.17(5)(a)(B) is not available to the applicant.

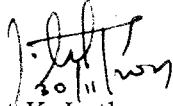
8.4 The third question raised before us, requires clarification as to Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies. According to Section 7(5)(b) read in conjunction with section 5(1) of IGST Act 2017, supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated as a supply in the course of interstate trade or commerce and leviable to tax under IGST Act. Also in accordance with Section 16(1) of IGST Act 2017, supply of

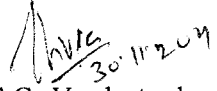
goods or services to SEZ developer or SEZ unit is classified as "Zero rated supply". In addition, section 16(3)(a) of IGST Act 2017 enables a registered person to make zero rated supply under LUT without payment of IGST. Therefore, supply of renting/hiring of such Motor Vehicles to SEZ under LUT is a taxable supply. However, since the ITC of the Tax paid on purchase of such vehicles are restricted as per the provisions of S.17(5)(a) and not Excepted under S.17(5)(a)(A) for the reasons discussed at para 8.2 above, the ITC is not admissible on the tax paid on procurement of such vehicles.

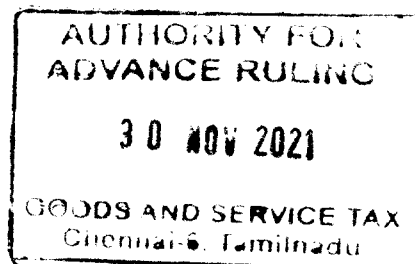
9. In view of the above, we rule as under:

RULING

1. GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented with Operators to the Vendors is not available to the applicant as INPUT TAX CREDIT(ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017 for the reasons specified at Para 8.2 above
2. GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will NOT be available to as INPUT TAX CREDIT (ITC) for the reasons stated at Para 8.3 above
3. Supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as **taxable supply;** ITC is not admissible on Motor Vehicles procured as the same is restricted at S.17(5)(a)(A) of the Act.


Smt.K. Latha,
Member, TNGST


Shri T.G. Venkatesh,
Member, CGST.



To

M/s. New Pandian Travels Private Limited ,

No. 1078-b, 19th Main Road First Block,

Anna Nagar, Chennai. 600 040.

// BY SPEED POST WITH ACK.DUE //

Copy Submitted to:

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

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai (North) Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.
4. Assistant Commissioner(ST)
Amaidakarai Assessment Circle,
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Chennai – 600 102.
5. Master File/ Spare – 2.

