THE APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX, UTTAR PRADESH

4, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW – 226 010.

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Appeal Order No.19/AAAR/25/11/2021 Date:25.11.2021

Before the Bench of:-

1. **Shri Ajay Dixit,**
   Member, Central Tax

2. **Smt. Ministhy S.,**
   Member, State Tax

Legal name of the Appellant	M/s ADITHYA AUTOMOTIVE APPLICATIONS PVT LTD
Trade Name of the Appellant	M/s ADITHYA AUTOMOTIVE APPLICATIONS PVT LTD
GSTIN Number	09AAFCA8545E1ZL
Registered address/Address provided while obtaining user ID	Vendors Industrial Park, Plot No. T-2, Tata Motors Eastern Complex, Chinhat Industiral Area, Goyala Deva Road, Luknow
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 82/2021 dated 30.06.2021 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UPGST Act") by M/s. Adithya Automotive Applications Pvt Ltd, Vendors Industrial Park, Plot No. T-2, Tata Motors Eastern Complex, Chinhat Industiral Area, Goyala Deva Road, Lucknow (hereinafter referred to as the "Appellant") against the Advance Ruling Order No. UP ADRG 82/2021 dated 30.06.2021 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017 and vice versa.

Brief Facts of the Case

1) M/s Adithya Automotive Applications Pvt Ltd, a private limited company, having registered address at Vendors Industrial Park, Plot No. T-2, Tata Motors Eastern Complex, Chinhat Industrial Area, Goyala Deva Road, Luknow (the Appellant) is a registered assessee under GST having GSTN: 09AAFCA8545E1ZL.

2) As per Appellant, they are engaged in the body building and mounting of body on the chassis of different models of Tippers, Tankers, Trucks and Trailers. They receive chassis of these items from TATA Motors and other customers on the basis of returnable challan. They undertake body building as per contract / purchase order issued by M/s TATA Motors.

3). Accordingly, the Appellant has submitted an application dated 18.03.2021, before the Authority for Advance Ruling Uttar Pradesh and sought Advance Ruling on the following questions : –

(i) Whether the body building activity on the chassis provided by the principal would amount to manufacturing services attracting 18% of GST.

(ii) Whether clarification of CBIC vide para no. 12.3 of Circular No. 52/26/2018-GST date 09.08.2018 clarifying 18% rate of GST in respect of building of body of buses would also apply in the case of applicant.

4). The Authority for Advance Ruling, vide Order No. 82/2021 dated 30.06.2021 ruled that:

(i) the body building activity on the chassis provided by the principal would not amount to manufacturing services attracting 18% of GST.

(ii) clarification of CBIC vide para no. 12.3 of Circular No. 52/26/2018-GST date 09.08.2018 clarifying 18% rate of GST in respect of building of body of buses would also not apply in the case of applicant.

5) Being aggrieved with the Order No. 82/2021 dated 30.06.2021, the Appellant filed this appeal application before us.

Grounds of appeal submitted by the Appellant:-

6) The Appellant made the following grounds for filing of appeal:

6.1) The cost of mounted body is always less than 20% of the cost of the chassis and as such it can be seen that there is no apparent dominant nature of the work of the body building when compared to the chassis. Section 2(68) of the GST Act, 2017 defines job work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job worker'. The ownership of the goods does not transfer to the job worker but it rests with the principal. The job worker is required to carry out the process specified by the principal, on the goods. This is submitted that the Appellant was carrying on body building process on physical inputs i.e. chassis owned by the principal i.e. TATA Motors, hence the activity of the Appellant will be treated as job work not as manufacture as held by the Authority of Advance Ruling. Further, the issue stands clarified by the CBIC under its Circular No. 38/12/2018 Dated 26.03.2018 as amended by Circular No. 88/07/2019-GST.

6.2) As per Schedule-II of Section 7 of the CGST Act 2017, there is no scope to treat the activity of job work as manufacturing activity. The job work i.e. treatment of process has been defined as supply of service in the above provision of Schedule-II. Further, Section 19 of the CGST Act also explains the definition of the principal as a 'person supplying goods to the job worker' and certain responsibility has been also cast upon the principal in this regard. The chassis of Tippers, Tankers and Trucks etc. after the job work remains the same and there is no change in name, character or address. In other words body mounted tippers, tankers, or trucks do not emerge as new product and are known as tippers, tankers or trucks only in common trade parlance.

6.3) The Authority of Advance Ruling has erroneously presumed that the ownership of chassis has been transferred to the Appellant by the principal and tax invoice issued by the Appellant to the principal also mentions the description of the goods along with the body serial no. as well as rate 28%. Ownership has been defined as state or fact of exclusive rights and control over property which may be any intellectual property etc or object / land or real state. In the instant case the chassis delivered to the Appellant remains in temporarily possession only for certain time to carry out the process of job work as per direction of the principal. The Appellant has received the chassis only as job worker and in the invoice, it is clearly mentioned that the actual recipient is M/s Tata Motors Limited (Lucknow). The Appellant also relied upon certain case laws to vindicate their stand.

7) Following the principle of natural Justice, the appellant was granted personal hearing on 23rd November 2021. Sh. Subhash Chandra Pandey, Chief Financial Officer and Sh. Dushyant Kumar, Consultant appeared in personal hearing on behalf of the Appellant.

During the course of personal hearing, they reiterated the submissions already made vide appeal application dated 30.08.2021. They have nothing more to add.

DISCUSSION AND FINDING

8) We have gone through the submissions made by the Appellant and examined the detailed explanation submitted by them. We observe that the while deciding the question the Authority for Advance Ruling has concluded that :-

a. *The applicant is receiving only chassis and all other inputs/materials required for fabrication of the body has to be used by the applicant from its own account.*

b. *The ownership of chassis has been transferred to the applicant by the principal.*

9) Before deliberating the issue we first elaborate the process of body building, as informed by the appellant, which is as under:-

the body building process may be summed up as under:-

(a) Fabrication of steel sheets, hallow steel pipes, Round Steel pipes, angles and Channels of steel according to desired / required size.

(b) Assembly / joining of the above-mentioned fabricated pieces of iron and steel by way of welding with help of welding electrodes (copper coated wire) to give a shape of Tipper body.

(c) Mounting / fixing of the assembled structure of the tipper body on the chassis by welding with the help of welding electrodes and also in certain places with nuts and bolts.

(d) Fixing of hydraulic kit by welding with help of welding electrodes (copper coated wire) for lifting the tipper body as and when required and finally finishing.

(e) The chassis of the Tippers, Tankers, and Trucks etc are received on free of cost basis, under the delivery challan.

10) Further, Manufacture has been defined under Section 2(72) of the CGST Act 2017, as under:-

"(72) "Manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly."

Whereas, Section 2(68) of the CGST Act, 2017 defines the job work as:-

(68) Job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression –job worker shall be constructed accordingly".

11) As regard to use of other inputs/materials required for fabrication of the body, by the Appellant on its own, we observe that the same has been clarified by Circular No. 38/12/2018 Dated 26.03.2018, as amended. The relevant clarification is reproduced as under:-

"Scope/ambit of job work: Doubts have been raised on the scope of job work and whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. It may be noted that the definition of job work, as contained in Clause (68) of Section 2 of the CGST Act, entails that the job work is treatment or process undertaken by a person on goods belonging to another registered person. Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work."

In view of above deliberation, we are of the opinion that the job worker can use certain inputs required for fabrication work and the same will not amount to manufacture.

12). Now, coming to the question regarding transfer of ownership to the appellant, we observe that, as per Appellant, they are procuring some inputs like steel sheets, windows, glasses, wiring harness etc on payment of duty, which is further claimed as Input Tax Credit whereas the chassis of tippers, tankers and trucks etc are received by them, free of cost, under the delivery challans. Accordingly, we are in unison with the Appellant that the chassis delivered to the Appellant remains in their temporarily possession only for certain time to carry out the process of job work as per direction of the principal. The Appellant has received the chassis only as job worker and on free cost basis under the delivery Challan, In view of this, we are of the opinion that the ownership of the chassis always remains with the Principal i.e. M/s TATA Motors.

13) With reference to the applicable tax rate, we observe that the same has been clarified Circular No. 52/26/2018-GST dated 09.08.2018, the relevant portion is as under:-

"12.2 (b)- Bus body builder builds body on chassis provided by the principal for body building, and charge fabrication charges (including certain material that was consumed during the process of job work).

12.3- In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @ 28%. In the case as mentioned at para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18 % GST as applicable will be charged accordingly."

14) We also observe that as per Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended, it has been clarified that the Tax rate for *"(ic) Services by way of job work in relation to bus body building"* would be 18% (9% CGST & 9 % SGST).

15) In view of above we are of the opinion that the Circular No. 52/26/2018-GST dated 09.08.2018 is squarely applicable in the case of Appellant and accordingly we pass the following ruling.

RULING

In view of the above discussion, we hold that the body building and mounting of body on the chassis of different models of Tippers, Tankers, Trucks and Trailers, on the chassis to be supplied by the Principal, on delivery challans, by collecting job work charges for such fabrication work is taxable @18%, in accordance with Circular No. 52/26/2018-GST dated 09.08.2018, subject to fulfillment of all the conditions prescribed in the Section 141 and 143 of the CGST Act, 2017 read with relevant Rules/Notifications.

(Ajay Dixit)
Member AAAR
CGST

(Ministhy S)
Member AAAR
SGST

To,

M/s. Adithya Automotive Applications Pvt Ltd,
Vendors Industrial Park, Plot No. T-2,
Tata Motors Eastern Complex, Chinhat Industiral Area,
Goyala Deva Road,
Lucknow.