



SPEED POST

**ODISHA STATE APPELLATE AUTHORITY FOR ADVANCE
RULING FOR GOODS AND SERVICE TAX
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(CONSTITUTED UNDER SECTION 99 OF THE ODISHA GOODS AND SERVICES TAX ACT, 2017)

ORDER NO. 03/ODISHA-AAAR/Appeal/2024-25/

DATE:

-2024

BEFORE THE BENCH OF

- (1) Shri M S Reddy, Member (Chief Commissioner, GST, Central Excise and Customs, Bhubaneswar Zone)**
- (2) Ms. Yamini Sarangi, Member (Commissioner, Commercial Taxes & GST, Odisha)**

Legal Name and address of the Applicant	M/s. True Solar Private Limited, Samantaray Colony, Ravi Talkies Road, Bhubaneswar, Khorda
GSTIN	21AAFCT6970J1Z4
Details of appeal	Different opinion/views of State and Central AAR Members on the issue
Date of personal hearing	07.11.2024
Present for the Applicant (P.H. attended)	Jiban Pradhan, Advocate

Yamini



24

Jurisdictional Officer	(JURISDICTION-CENTRE)
	<ul style="list-style-type: none"> • Commissionerate - BHUBANESWAR • Division – BHUBANESWAR-I DIVISION • Range – BHUBANESWAR-VIII RANGE <p style="text-align: right;">Odisha.</p>

BRIEF FACTS OF THE CASE:

(At the outset we would like to make it clear that the provisions of Central Goods and Service Tax Act, 2017 and Odisha Goods and Service Tax Act, 2017 are in pari materia and have same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the OGST Act.)

1.0 M/s True Solar Private Limited bearing GSTIN 21AAFCT6970J1Z4, (herein after referred to as applicant) having principal place of business at Plot No.- 4071/B, Samantaray Colony, Ravi Talkies Road, Bhubaneswar, Odisha-751002 is engaged in supply of goods and Services. The applicant has filed an application for Advance Ruling (GST ARA-01) on 24.05.2023.

2.0 The Applicant has sought ruling in respect of the following question:

“whether leasing of electric vehicles (E-Bikes/ EVs) without operator can be classified under the heading 9973 – “Leasing or rental services without operator vide Sl. No. 17(viia) or (?) (iii) of the Notification No. 11/2017 – CT(R) dated, 28th June, 2017 as amended vide Notification No. 20/2019 – CT(R) dated, 30thSeptember, 2019”.



3.0 The applicant has executed a vehicle lease agreement with a Lessee named M/s. Techsofin Private Limited of Bhubaneswar, Odisha for supply of electric vehicles (E-Bikes) without operator on lease basis. The Applicant in its written submission contended that prior to 1st Oct'19, in the scheme of classification of services by Notification No. 11/2017 – Central Tax (Rate) dated 28th June 2017, there were two discrete headings i.e. heading 9966 & heading 9973 relating to the nature of supply. After 1st Oct'19, the said headings have been amended and as follows:

- a. Heading 9966 - Rental services of transport vehicles with operators.
- b. Heading 9973 – Leasing or rental services without operator.

3.1 The Applicant emphasizes on two entries, that is, Sl. No. 17 (iii) and 17 (vii a) of Heading 9973 only. It has been submitted that entry Sl. No. 17 (iii) applies when there is a transfer of the right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration. The Applicant relied upon the Supreme Court decision in BSNL case which laid down the attributes to consider a transaction as having the transfer of the right to use the goods and submitted that in its case, all the attributes have been satisfied and hence its case is specifically covered under Sl No. 17(iii) of rate notification as amended. It was also submitted that even if entry Sl. No. 17(iii) is not applicable to Applicant, it will still get covered under Sl. No. 17(viia) and for that the Applicant is liable to pay tax at the rate of tax applicable to the supply of like goods.

4.0 The Authority for Advance Ruling (AAR), Odisha after thoroughly examining the submission made by the Applicant, presentation during PH on dated 23.04.2024 and based upon the existing rules and regulations both the members of AAR have taken different opinions/views which is summarized below:



Opinion/View of AAR SGST Member:- Leasing of electric vehicles (E-Bikes) without operator is classifiable under the heading 9971 i.e. Financial and related services under entry Sl No. 15 (ii) of Notification No. 11/2017 – CT(R) dated, 28th June, 2017 as amended vide Notification No. 20/2019 – CT(R) dated, 30th September, 2019” and the rate of tax will be the same rate as applicable on supply of like goods involving transfer of title in goods.

Opinion/ View of AAR CGST Member - “Leasing of electric vehicles (E-Bikes/ EVs) is classifiable under the heading 9971 under entry Sl No. 15 (vii) of Notification No. 11/2017 – CT(R) dated, 28th June, 2017 as amended and the rate of tax as applicable is 18% (CGST-9% + SGST-9%).”

4.1 In view of the above, as the opinions/views of both the members of Odisha AAR are different on the impugned issue, hence the matter is transmitted to Appellate Authority of Advance Ruling (AAAR), Odisha in view of the Section 98(5) of the CGST Act, 2017.

Personal Hearing & Submission:

5.0 The then Odisha State Appellate Authority for Advance Ruling provided personal hearing to the Applicant for representing their case through Video Conference on 21.08.2024. The Applicant vide e-mail dated 21.08.2024 requested for adjournment to another suitable date. Accordingly, the next hearing was fixed on 07.11.2024 and an opportunity was provided to the Applicant for representing its case. Sri Jiban Pradhan, Advocate attended the personal hearing as authorized representative of the Applicant, M/s. True Solar Pvt. Ltd. on 07.11.2024.

During the personal hearing, he reiterated the submissions made before AAR and prayed for ruling as to leasing of Electric Vehicles without operators can be classified under Heading 9973- “Leasing or rental services without operator vide Sl. No. 17 (viia) or (iii) of the Notification No. 11/2017-CT(Rate)

dated 28.06.2017 as amended vide Notification No. 20/2019-CT(R) dated 30.09.2019.

DISCUSSION & FINDINGS

6.0 It is pertinent to examine the nature of lease agreement [(executed between the Applicant (here in after called as 'Lessor') & M/s. Techsofin Private Limited (here in after called as 'Lessee')] whether it is a Financial Lease or an Operating lease agreement. Leasing can be of two types – financial lease and operating lease. A financial lease is a lease where the risks and the returns get transferred to the lessee as they decide to lease assets for their businesses. An operating lease, on the other hand, is a lease where the risk and the return stay with the lessor. There are many differences between a financial lease and operating lease. Let's look at the most significant differences between these two:

Basis for Comparison	Financial Lease	Operating Lease
1. The term of the lease	It is a contract for the long term.	It is a contract for a short term.
2. Maintenance	In the case of a financial lease, the lessee would need to take care of and maintain the asset.	In the case of an operating lease, the lessor would need to take care of and maintain the asset.
3. Risk of obsolescence	It lies on the part of the lessee.	It lies on the part of the lessor.



4. Cancellation	Usually, during the primary terms, it can't be done; but there can be exceptions.	In the case of an operating lease, the cancellation can be made during the introductory period.
5. Purchasing option	In a financial lease, the lessee gets an option to purchase the asset he has taken on a lease.	In an operating lease, the lessee is not given any such option.

6.1 As seen from the submission of the Applicant and vehicle lease agreement submitted by the Applicant, it has been observed as under.

6.2 That, the lessor agrees to give and deliver over to the lessee EVs on lease for forty eight months unless termination of the contract/agreement. The leasing period of the EVs seems to be covered for a major part of its economic life. Further, from the lease rent invoicing, it is seen that the leasing charges received during four years meets the worth of the EVs/ value of the leasing goods over that period. The said EVs seems to be depreciated over the lease term of forty-eight months. So, it can be said that it is a contract for the long term.

6.3 That, the lessee shall be responsible for regular repair and maintenance of the EVs at his own cost and shall bear and pay running expenses of the EVs. The lessee shall be solely responsible for timely renewal of all legal documents i.e. Registration Certificate, Road Permit, Fitness Certificate and Insurance Policies etc. mandatory for running of the EVs as per applicable laws during the tenure of agreement. The lessee shall keep the EVs insured at all times

during the subsistence of this agreement against all risks and bear all the premiums payable to insurance company. In the event of rejection of insurance claim the onus of bearing the repair cost shall be on the lessee. The lessee shall obtain and keep effective all necessary licenses, permissions and consents for the transportation & use of the EVs. All taxes and other dues as are required to be paid in respect of the EVs shall be paid by the lessee and if any permit or license to use the said EVs is required to be obtained from any government or any local authority the same shall be obtained by the lessee at his own cost and responsibility. Further, from para 15 of the lease agreement, it is noticed that the lessee has been given an option to purchase the asset he has taken on a lease after expiration of lease.

6.4 In view of the above discussions, it appears that the Applicant has entered into a financial lease agreement with the lessee and engaged in supply of financial leasing services/financial and related services. The appropriate heading for the said service would be 9971. For ease of reference, the relevant entry Sl. No. 15 of Notification No. 11/2017-C.T. (R), dated 28-6-2017 as amended from time to time is reproduced below for clarity:

15	Heading 9971 (Financial and related services)	(i) *****	****	****
		(ii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	



		(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods.	
		(iv) *****	*****	****
		[(v) Leasing of motor vehicles purchased and leased prior to 1st July 2017;	65 percent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods. Note:- Nothing contained in this entry shall apply on or after 1 st July, 2020.	
		(vi) service of third party insurance of "Goods Carriage"	6	

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		[(vii) Financial and related services other than (***) (ii), (iii), (***) (v), and (vi) above.	9	-
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6.5 As regards rate of tax on such services, it is pertinent to mention that the entry Sl. No. 15 (ii) applies when there is a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. Transfer of right to use goods is a well-recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. The transfer of the right to use any goods is treated as a deemed sale under Article 366(29A)(d) of the Constitution of India. The applicability of Article 366(29A)(d) was discussed at length by the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited and Another v. Union of India and Others* [2006 (3) SCC (1) = 2006 (2) S.T.R. 161 (S.C.)] ("*BSNL*"). In the case of *BSNL*, the Hon'ble Supreme Court held that the purpose of Article 366(29A)(d) was to levy tax on those transactions where there was a "transfer of the right to use any goods" to the purchaser, instead of passing the title or ownership of the goods. Thus, by a fiction of law, these transactions were now treated as 'sale'. Elucidating on the "transfer of the right to use any goods", the Hon'ble Supreme Court held as follows:

"91-To constitute "a transaction for the transfer of the right to use the goods, the transaction must have the following attributes:

- (a) There must be goods available for delivery;
- (b) There must be a consensus ad idem as to the identity of the goods;
- (c) The transferee should have a legal right to use the goods - consequently all legal consequences of such use including any



permissions or licenses required, therefore should be available to the transferee;

- (d) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor; this is the necessary concomitant of the plain language of the statute viz. a “transfer of the right to use ” and not merely a license to use the goods;
- (e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.”

6.6 In order to determine whether the instant transaction involves the “transfer of the right to use goods”, it is imperative to state that all the five attributes are evident. We have gone through the ‘Vehicle Lease Agreement’ furnished by the Applicant which is an agreement between the Applicant (Lessee) & Techsofin (p) ltd. (Lessor). Transfer of right to use also involves transfer of possession and control of the goods to the user/recipient of goods. The right to use the goods in this case is the right to use the vehicles which can be said to have been transferred by the Applicant to the recipient of goods only if the possession of the said vehicles are transferred. In other words, the recipient would have the right to use the vehicles only if it is in the lawful possession of the vehicles. There has to be, in that case, an act demonstrating the intention to part with the possession of the vehicles. On this backdrop, it is essential to analyze the terms of the agreement to ascertain whether effective control and possession has been transferred by the supplier Applicant (lessor) to the recipient of the goods(lessee).

6.7 On examination of the terms and conditions of the Vehicle Lease Agreement, it is seen that the lessor agrees to give and deliver over to the lessee Electric Vehicles (EVs) on lease for forty-eight months unless termination of the contract/agreement. The lessee shall be responsible for regular repair and maintenance of the EVs at his own cost and shall bear and pay running



expenses of the EVs. The lessee shall be solely responsible for timely renewal of all legal documents i.e. Registration Certificate, Road Permit, Fitness Certificate and Insurance Policies etc. mandatory for running of the EVs as per applicable laws during the tenure of agreement. The lessee shall keep the EVs insured at all times during the subsistence of this agreement against all risks and bear all the premiums payable to insurance company. In the event of rejection of insurance claim the onus of bearing the repair cost shall be on the lessee. The lessee shall obtain and keep effective all necessary licenses, permissions and consents for the transportation & use of the EVs. All taxes, duties and other dues, as are required to be paid in respect of the EVs, shall be paid by the lessee and if any permit or license to use the said EVs is required to be obtained from any Government or any local authority the same shall be obtained by the lessee at his own cost and responsibility.

6.8 It is also apparent that all the attributes laid down by the Hon'ble Supreme Court are evident in this transaction as per the Vehicle Lease Agreement. The said agreement is very clear that the goods available for delivery are 'e-bikes' which are goods. The said agreement provides legal rights to use e-bikes to the lessee. The lessor, during the continuance of the agreement cannot assign, pledge, mortgage, lend or part with the possession of the EVs and cannot allow the said EVs to be used by anybody else except as per the terms of this agreement. So, in the present transaction, it can be said that effective control and physical possession of the goods have been transferred by the supplier Applicant (lessor) to the recipient of the goods (lessee). While using such e-bikes or during the tenure of agreement, the vehicles continue to be in possession of the lessee and the transaction involves transfer of right to use such goods. In other words, the lessee has the possession & effective control of the goods in all respect. Reliance is also placed on the judgment of Hon'ble Apex Court in **Great Eastern Shipping Co. Ltd. v. State of Karnataka, (2020) 3 SCC 354**, wherein the Hon'ble Court while interpreting the expression "*transfer of right to use the goods' i.e. in respect of use of a vessel, in a VAT matter (which is the extended definition of deemed sale*



as per Article 366(29A)(d) of the Constitution of India) had observed that the vessel was available for delivery and in fact, had been delivered; that there was no dispute as to the vessel and charter had a legal right to use the goods, and the contractor had no right to give the vessel for use to anyone else. This decision is fully applicable to be given fact of the present matter.

Applying the principles set forth in the said judgment, along with the settled legal position, to the facts at hand, it is evident that the agreement between the appellant and the lessee clearly demonstrates the intention to transfer the right to use the goods (e-bikes). The terms of the agreement unequivocally establish that the appellant (lessor) has legally and effectively transferred the right to use the goods to the lessee as per the agreed contractual conditions. Consequently, the present transaction squarely falls within the ambit of Entry Sl. No. 15(ii) of the Rate Notification referred to above i.e. transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration and the rate of tax will be the same rate of tax as applicable on supply of like goods involving transfer of title in goods.

RULING

7.0 Based on the above discussions and findings, the following ruling is passed by the AAAR Odisha State as per the questions raised by M/s True Solar Pvt. Ltd.:-

Q. “Whether leasing of electric vehicles (E-Bikes/ EVs) without operator can be classified under the heading 9973 - “Leasing or rental services without operator vide Sl. No. 17 (viiia) or (?) (iii) of the Notification No. 11/2017 - CT(R) dated, 28th June, 2017 as amended vide Notification No. 20/2019 - CT(R) dated, 30thSeptember, 2019”.

Ans. Leasing of electric vehicles (E-Bikes) without operator is classifiable under the heading 9971 i.e. Financial and related services under entry Sl No. 15 (ii) of



Notification No. 11/2017 – CT(R) dated, 28th June, 2017 as amended vide Notification No. 20/2019 – CT(R) dated, 30th September, 2019” and the rate of tax will be the same rate as applicable on supply of like goods involving transfer of title in goods.



C.No.IV(01)05/CC/ODISHA-AAAR/BBSR/2020-21

Date:- 18/12/24

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Copy to

1. The Pr. Commissioner/Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate.
- ✓ 2. The Commissioner, Commercial Taxes & GST, Odisha, Cuttack.
3. The Assistant Commissioner, Bhubaneswar-I Division.
4. M/s True Solar Private Limited GSTIN 21AAFCT6970J1Z4, at Plot No.- 4071/B, Samantaray Colony, Ravi Talkies Road, Bhubaneswar, Odisha- 751002.
5. PS to the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar Zone.
6. The Commissioner, CGST & Central Tax, Rourkela Commissionerate.
7. The Web Manager, www.gstconucil.gov.in
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