

## **GST @ 12% chargeable on supplying, operating, and maintaining air-conditioned electrically operated buses with ITC**

The Maharashtra Authority of Advance Ruling (“AAR”) in *Re: MH Ecolife E-Mobility Pvt. Ltd. (Advance Ruling No. 60/2020-21/B-116 dated December 22, 2021)* held that services by way of supplying, operating, and maintaining air-conditioned electrically operated buses would be chargeable @ 12% with Input Tax Credit (“ITC”) and @ 5% without ITC.

### **Facts:**

MH Ecolife E-Mobility Pvt. Ltd., Maharashtra (“**the Applicant**”) and Navi Mumbai Transport Undertaking (“**NMMT**”) have entered into an Operator Agreement dated February 25, 2020 (“**the Agreement**”) wherein the Applicant was responsible for the following:

- Procure and supply air-conditioned electric buses to NMMT on gross contract basis to be plied on routes identified by NMMT.
- Ownership of the buses was vested with the Applicant.
- Operating and maintaining the buses by employing drivers and other staff necessary for the operation and maintenance of buses.
- Incurring all the expenses for operating the buses including expenses on repairs and maintenance, procurement of spare parts, charging of batteries etc.
- The Applicant shall be paid an amount on the basis of kilometers logged by the buses.
- The fuel used to run the buses is electricity with help of Lithium Ion batteries fitted in the buses.

And, NMMT or a third party appointed by NMMT, was responsible to collect appropriate fare from the passengers.

### **Issues:**

- Whether services provided by way of supplying, operating, and maintaining air-conditioned electrically operated buses are taxable and subject to GST?
- Whether ITC can be availed of tax paid on the procurement of input supplies used in supplying services?
- What will be the appropriate Service Accounting Code (“**SAC**”) for classifying the services?

### **Held:**

The Maharashtra AAR in *Advance Ruling No. 60/2020-21/B-116 dated December 22, 2021* held as under:

- Noted that the issue involved in the present case is similar to case of *M/s. M P Enterprises & Associates Limited [Advance Ruling No. GST-ARA 37/2020-21/B-16, dated June 14, 2021]* the only difference is that in the subject case, the fuel supplied by the Applicant is in the form of electricity, instead of diesel which was used as fuel in the above referred case.
- The consideration charged by the Applicant under the Agreement is inclusive of all the charges including the cost of lithium ion batteries, and thus it can be said that the cost of fuel is included in the consideration charged.
- In the case of transportation of passengers, the recipient of service would be the passenger whereas in the case of renting of any motor vehicle, the recipient would not be the passenger. In the subject case, the consideration for supply of service is charged from NMMT and not the passenger. Therefore, it is clear that the recipient of service is NMMT. Hence, the subject activity, amounts to 'renting of motor vehicle' and shall qualify as a taxable activity under the provisions of the GST Laws.
- Accordingly, the service of operating AC buses by the Applicant for NMMT would be subject to GST @12% under Tariff Heading 9966 i.e., "renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient" inserted by way of *Notification No.31/2017-Central Tax (Rate) dated October 13, 2017 (Amending Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017)* chargeable @ 12% with ITC and @ 5% without ITC.

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