

**Subsidized shared transport facility provided to employees in terms of employment contract is not chargeable to GST**

The AAR Uttar Pradesh, in the matter of ***North Shore Technologies (P.) Ltd. [Order No. 59 of 2020 June 29, 2020]*** has held that, arranging the transport facility for the employees by the company engaged in business of software development is not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course or furtherance of development of software as it is not integrally connected to the business in such a way that without this, the business will not function. Therefore, subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would not be construed as 'supply of service'.

**Facts:**

M/s. North Shore Technologies Private Limited, (“**the Applicant**”) is a company, engaged in the business of software development, consultancy and staff augmentation services from its business premises.

The Applicant provides an optional subsidized shared transport facility to their employees for commutation between office and residence. This facility is provided by third party vendor who issues bill in the name of the applicant and charges GST therein. However, the Applicant has not availed any Input Tax Credit (“**ITC**”) on the same. As regard to the payment to the third party vendor, towards transport charges, the Applicant deducted subsidized amount from the salaries of employees and bear the balance cost itself.

**Issue:**

Whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be construed as “supply of service” by the Applicant to its employees?

**Held:**

The AAR Uttar Pradesh, in the matter of ***North Shore Technologies (P.) Ltd. [Order No. 59 of 2020 June 29, 2020]*** held as under:

- Noted that, arranging the transport facility for the employees and recovery from employees towards such transport facility by Applicant under the terms of the employment contract, cannot be considered as supply of service in the course or furtherance of business.
- Observed that, the Applicant is transferring the entire amount collected from their employees, to the third party vendor who is providing transport services to their employees. Apart from subsidized amount collected from the employees, the Applicant is also adding up a considerable amount into it and then paying it to the third party vendor and is not retaining any amount collected from the employees towards said transportation charges.
- Further observed that, the Applicant is not in the business of providing transport service. Rather, this is a facility provided to their employees under the obligation of Law of the Land.
- Held that, arranging the transport facility for the employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course or furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

**Our comments:**

It is to be noted that a contrary stand was taken in ***Re: Tata Motors Limited [Advance Ruling No. GST-ARA- 23/2019-20/B-46 dated August 25, 2020]*** wherein the applicant had engaged service providers to provide a transportation facility to its employees and the AAR, Maharashtra held that the supply of services received by the applicant is used in the course or furtherance of their business.

Similarly, AAR Kerala in the similar matter of ***M/s. Caltech Polymers Pvt. Ltd. [Order No. CT/531/18-C3, dated March 26, 2018]*** held that supply of food by the employer to its employees is incidental or ancillary to the main business (even though there is no profit involved) therefore, falls under Section 2(17)(b) of the CGST Act.

Therefore, the term 'business' as defined under Section 2(17) of the CGST Act is wide enough to include any activity or transaction in **connection** with or incidental or ancillary

to the main business, but, there is **formidable strength in the logic and reasoning** that arranging the transport facility for the employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course or furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

Hence, it is requested to the CBIC Policy wing to clarify this issue at the earliest for unwanted litigation.

**Relevant Provisions:**

**Section 2(17) of the CGST Act:**

*“(17) “business” includes—*

*(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*

*(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*

*(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*

*(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*

*(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*

*(f) admission, for a consideration, of persons to any premises;*

*(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*

*(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and*

*(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities”*

**Section 7(1) of the CGST Act:**

*“Scope of supply-*

*(1) For the purposes of this Act, the expression “supply” includes—*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*

*Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;*

*(b) import of services for a consideration whether or not in the course or furtherance of business and;*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration*

*(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”*

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