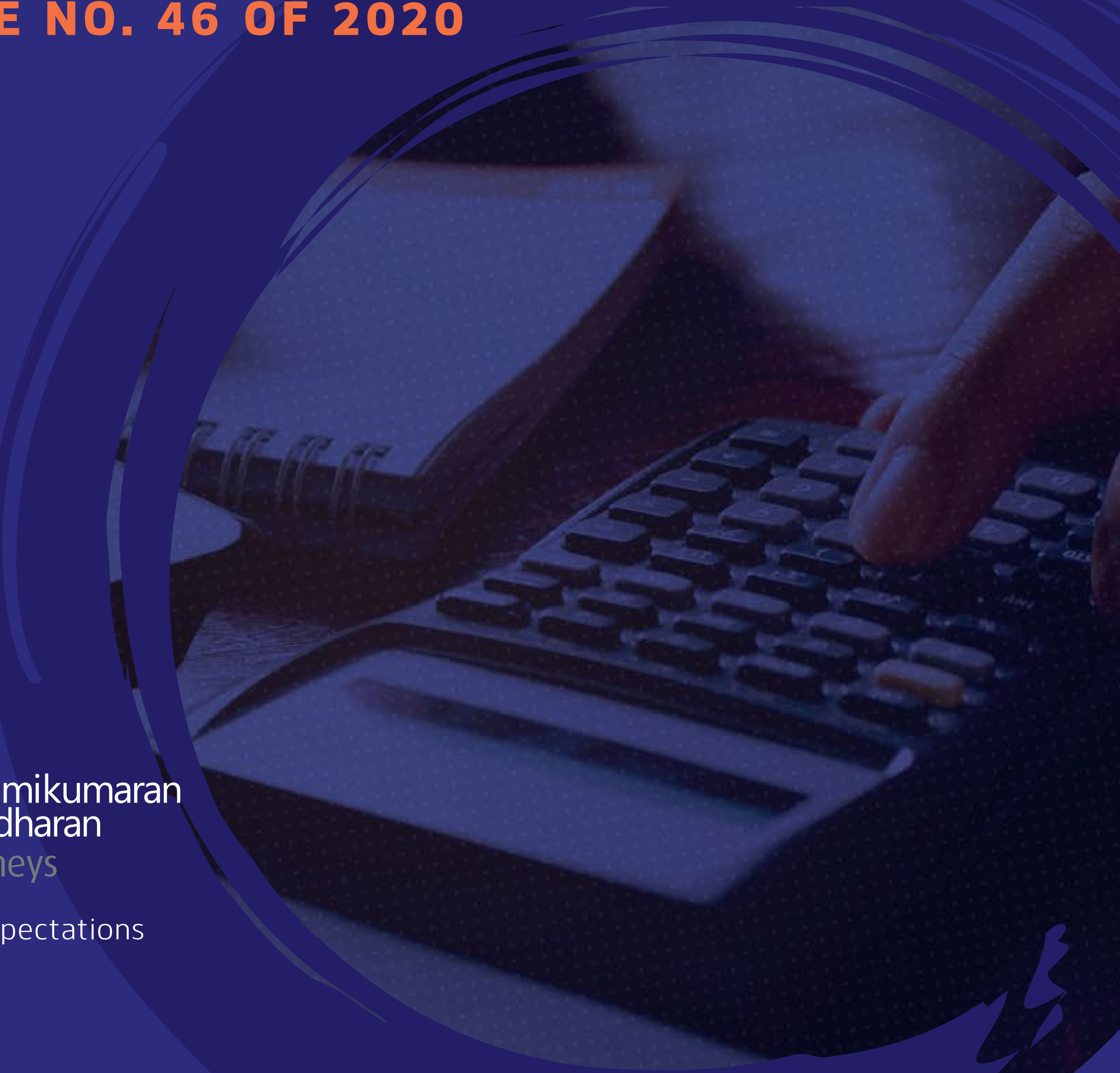
L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

4 DECEMBER 2020

GST

Transportation facilities arranged by employers for their employees, liable to GST as 'Supply between related persons'

UPDATE NO. 46 OF 2020



Lakshmikumaran & Sridharan
attorneys

exceeding expectations
SINCE 1985

FACTS

- The applicant / company (employer) had engaged a transport agency for employees of the company to travel to and from the workplace.
- The services were provided free of cost as a part of human resource policy, but in case of air-conditioned buses, the company recovered a nominal amount of Rs. 600/month.
- The advance ruling was sought on the aspects of taxability of such facility provided by the employer to the employee with or without recovery of cost from employees.

CONTENTIONS BY APPLICANT

- The free transportation facility is provided by the employer to its employees during the course of employment, more particularly, in return to the services supplied by the employee. Thus, the said services can be construed as a consideration for the supply of services by the employee. The services from employee to employer are covered under **Entry 1 of Schedule III to the Central Goods and Services Tax Act, 2017 ('CGST Act')**, hence, the consideration paid for such services shall not be liable to tax.

- Alternatively, the transportation facilities are provided by employer to employee free of cost, thus the same being supply without consideration cannot be construed as supply under Section 7(1)(a).

- The provision of said facility does not fall under Section 7(1)(c), which covers activities or transaction between related person made in **course or furtherance of business**, to be treated as supply even if made without consideration, because said facilities are not provided in course or furtherance of business for the following reasons: -

  - **Firstly,** the provision of transportation facility is not the business of the applicant, and neither does the applicant provide bus transportation facility to its employees nor are the employees buying this facility from the Applicant.
  - **Secondly,** the applicant does not intend to earn any income out of this facility.
  - **Thirdly,** the transportation facility is not mandated by law rather, the same is provided as an additional facility to employees.

- Hence, the transportation facility provided by company (employer) to the employees can be construed as a related party transaction, but it cannot be construed to be supply by virtue of Entry 2 of Schedule I as it is not done in the course or furtherance of business.

RULING

- The transportation facility provided by employer to employee qualifies as a transaction between **related parties**, as employer and employees are deemed to be related persons by virtue of the explanation attached to Section 15 of CGST Act.

- The transportation facility provided by the applicant to its employees qualify as an activity in furtherance of his business, as the expression 'furtherance of business' is broad enough to cover anything done in relation to business, while carrying out business or simply an ordinary activity of that organization to run its business.

- Thus, the transport facilities provided by employer to employee either free of cost or upon collection of a nominal amount, would be a taxable service under GST and for valuation of such services, provision under Section 15 shall be applicable.

KEY TAKEAWAYS

- Transportation facility provided by employer to employee in the course or furtherance of business can not be covered under Entry 1 of Schedule III, because the said entry covers services provided by employee to the employer and not the other way around.

- The expression '**activity in furtherance of business**' is broad enough to cover anything done in relation to business, while carrying out business or simply an ordinary activity of that organization to run its business. Thus, regardless of nature of business, if such facilities are extended by the employer to the employee, the same can be said to be done in furtherance of business.

- The present ruling issued by AAR-Haryana is in total derogation to the ruling issued by AAR- Maharashtra to *Tata Motors* [2020-VIL-257-AAR] on the similar facts. The AAR-Maharashtra ruled that the transportation facilities supplied by the employer to employees, are covered under "Employer-Employee" relation, thus, the same does not qualifies as supply by virtue of Entry 1 of Schedule III. Hence, when applicant is not supplying any services to its employees, GST would not be applicable on the nominal amounts recovered by applicants from their employees.

- It is pertinent to note that in the matter of *Caltech Polymers Private Limited* [2018 (4) TMI 582] which has been upheld by Appellate Authority for Advance Ruling [2018 (10) TMI 1313], it was held that recovery of the amount from employees for the canteen services provided by the company would be considered as outward supply and GST will be applicable on the same.

L&S ADVISORY

- In a Press Release dated 10 July 2017, it was clarified by the CBIC that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

- The liability for payment of tax on provision of facilities to employees may arise when perquisites are outside the scope of employment agreement. The terms of contract or employment therefore plays a crucial role in determining the taxability of perquisites in the hands of the employer.

- Employers providing certain facilities or perquisites (such as transportation, canteen, insurance, healthcare, etc.) to its employees are advised to review the terms of employment with its employees in view of the divergent rulings on this issue.

- The companies are also advised to revisit the stand taken by them on the GST implication on partial recovery of money towards provision of various facilities to their employees.

[In RE: Beumer India Private Limited - Advance Ruling No. HAR/HAAR/2020-21/1, dated 29 October 2020, AAR Haryana]

LOCATIONS

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: Lsdel@lakshmisri.com

MUMBAI

2^{nd} Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: Lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2^{nd} Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: Lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4^{th} Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: Lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: Lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: Lsahd@lakshmisri.com

PUNE

607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: Lspune@lakshmisri.com

KOLKATA

2^{nd} Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: Lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1^{st} Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: Lschd@lakshmisri.com

GURUGRAM

OS2 & OS3, 5^{th} Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: Lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: Lsallahabad@lakshmisri.com

KOCHI

1^{st} Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam,
Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: Lskochi@lakshmisri.com

JAIPUR

2^{nd} Floor (Front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur, Rajasthan 302 015
PHONE: 0141-456 1200
E-MAIL: Lsjaipur@lakshmisri.com

NAGPUR

1^{st} Floor, HRM Design Space, 90-A,
Next to Ram Mandir, Ramnagar,
Nagpur – 440033.
E-MAIL: Lsnagpur@lakshmisri.com

www.lakshmisri.com

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985