

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. M. Rammohan Rao, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN NO	AD270321032563G	
GSTIN Number, if any/ User-id	27AADCC3230A1ZF	
Legal Name of Applicant	M/s. CHEP INDIA PVT LTD	
Registered Address/Address provided while obtaining user id	B-13, Aver Plaza, New Link Road, Opp. Citi Mall, Andheri West, Mumbai Suburban 400053.	
Details of application	GST-ARA, Application No. 82 Dated 23.03.2021	
Concerned officer	Commissioner-Mumbai-West, Division-III	
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	CHEP India Private Limited is an Indian company and a wholly owned subsidiary of Brambles Limited, a company listed on the Australian Securities Exchange (ASX) and has its headquarters in Sydney, Australia. The Applicant is part of this global organization and its business is primarily renting of re-usable unit-load equipment for shared use by multiple participants within industrial and retail sector throughout the supply chain, under a business model known as "pooling". Ownership of the equipment rests with CIPL at all times. CIPL enhances performance for customers by helping them transport goods through their supply chains more efficiently, sustainably and safely.
Issue/s on which advance ruling required		<ul style="list-style-type: none"> • Determination of time and value of supply of goods or services or both • Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. CHEP INDIA PVT LTD**, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by CHEP India Private Limited (hereinafter referred to as "CIPL" or "the Applicant") located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act and MGST Act?
2. If the answer to Question 1 is yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?
3. What are the documents that should accompany the movement of the goods from CIPL, Maharashtra to CIPL, Karnataka?
4. Whether movement of leased equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?
5. With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Karnataka to CIPL, Tamil Nadu?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

The submissions, as reproduced verbatim, could be seen thus-

1. *CHEP India Private Limited is an Indian company and a wholly owned subsidiary of Brambles Limited, a company listed on the Australian Securities Exchange (ASX) and has its*

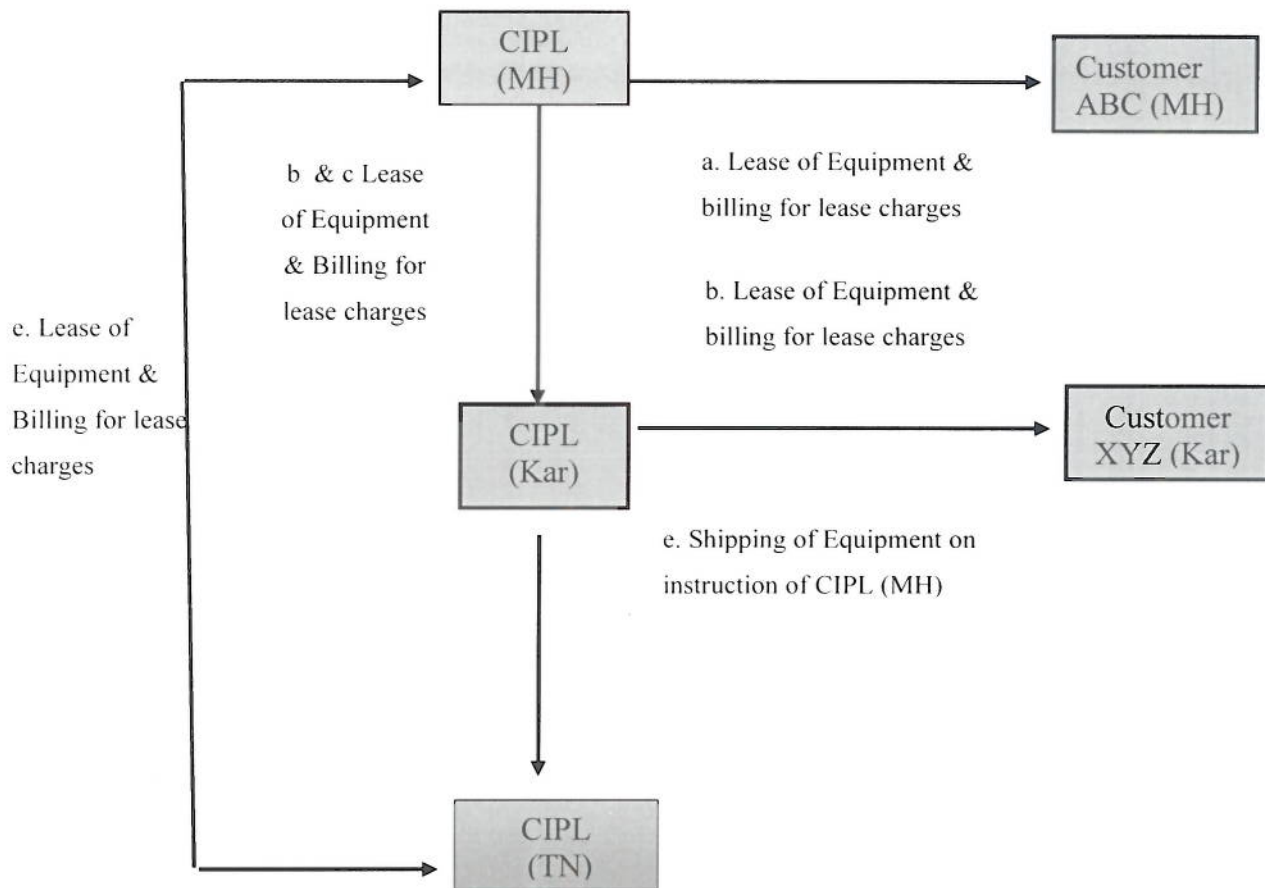


headquarters in Sydney, Australia. The Applicant is a part of this global organization and its business is primarily renting of re-usable unit-load equipment for shared use by multiple participants within industrial and retail sector throughout the supply chain, under a business model known as "pooling". Ownership of the equipment rests with CIPL at all times. CIPL enhances performance for customers by helping them transport goods through their supply chains more efficiently, sustainably and safely.

2. CIPL is contemplating certain changes in its existing business model. The broad business mechanics of the proposed business model would be as follows:
 - a. CIPL would be consolidating the ownership of all the equipment into the state of Maharashtra. Currently, while majority of the procurements / manufacture happen in Maharashtra, some of the procurements are also done from other states.
 - b. As the ownership of equipment would be with CIPL, Maharashtra, it would be entering into the arrangement with the customer and all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges.
 - c. CIPL, Maharashtra would thereafter lease the equipment to its other CIPL units based on their demand requirement. CIPL, Maharashtra would be sending the equipment to the other unit of CIPL (Say CIPL, Karnataka) under the cover of the delivery challan. CIPL, Maharashtra would be raising periodical invoices for lease charges (based on number of days of usage) to CIPL, Karnataka.
 - d. CIPL, Karnataka would thereafter be issuing the equipment to its customers who would be using it for movement of their goods through the supply chain. CIPL, Karnataka would be charging the lease charges to its customers based on the period for which the equipment would be used by the customers.
 - e. Also, there are chances that other units of CIPL, (Say CIPL, Tamil Nadu) may require certain equipment from CIPL Maharashtra which are available with CIPL, Karnataka (under lease from CIPL Maharashtra). In such a case, basis instructions from CIPL, Maharashtra, CIPL, Karnataka would transfer the equipment to CIPL, Tamil Nadu. In such a case, the moment equipment reaches CIPL Tamil Nadu, CIPL, Maharashtra would stop charging CIPL, Karnataka and start charging CIPL, Tamil Nadu towards lease charges (basis number of days of usage). Further, CIPL, Karnataka would charge CIPL, Maharashtra a consideration for facilitation / arrangement of movement of equipment to CIPL, Tamil Nadu basis the instruction.

The diagrammatic representation is provided below –





3. In light of the above background, the Applicant would like to seek advance ruling with regard to the following –

Question 1 – Whether the pallets, crates and containers (hereinafter referred as “equipment”) leased by CHEP India Private Limited (hereinafter referred to as “CIPL” or “the Applicant”) located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act and MGST Act?

Question 2 – If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

Question 3 – What are the documents that should accompany the movement of the goods from CIPL, Maharashtra to CIPL, Karnataka?

Question 4 - Whether movement of leased equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?

Question 5 - With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Karnataka to CIPL, Tamil Nadu?



B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW APPLICANT'S INTERPRETATION

At the outset we would like to make it clear that the provisions of CGST Act and MGST Act are in pari materia and have the 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 MGST Act

Relevant Legislations

1. Government of India has with effect from 1 July 2017, introduced a unified goods and service tax ("GST") to replace the various indirect tax levies (i.e. central excise, VAT, service tax, entry tax etc.)
2. GST is a destination and consumption-based tax which is levied on supply of goods or services or both. GST is levied and collected on value addition at each stage of production or distribution process (all points in supply chain).
3. The term "Supply" is defined under Section 7 of the CGST Act to include –
 - (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

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

As per Schedule I of the CGST Act, one of the activities to be considered as Supply even if made without consideration, is "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business"

Section 25 (4) of the CGST mentions that "A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act"

As per Section 15 of the CGST Act, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

As per Rule 28 of the CGST Rules which deals with valuation, in case of supply of goods or services between distinct person as specified in sub-section (4) and (5) of section 25 of the CGST Act or related persons, the value shall be,

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person: Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.



As per Rule 55 of the CGST Rules which deals with transportation of goods without issue of invoice. -(1)For the purposes of-

- (a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
- (b) transportation of goods for job work,
- (c) transportation of goods for reasons other than by way of supply, or such other supplies as may be notified by the Board, the consigner may issue a delivery challan.....

As per Rule 138 of the CGST Rules, which deals with e-way bill generation - "Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically...."

Applicant's view

Question 1 - Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by CHEP India Private Limited (hereinafter referred to as "CIPL" or "the Applicant") located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act?

1. As mentioned above, GST is leviable on supply of goods or services. The definition of supply is wide enough to include "lease" within its ambit. Also, as per point 5(f) of Schedule 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" is deemed as service under GST
2. The term "lease" is not defined under the GST law. Accordingly, we would like to draw reference to Indian Accounting Standard (Ind AS) 116 which provides for principles for the recognition, measurement, presentation and disclosure of leases in the books of account. As per the Ind AS, lease is defined as "A contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration". Also, 'lease' is defined in Section 105 of the Transfer of Property Act, 1882 in relation to immovable property as under - "A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."
3. Accordingly, any lease transaction is deemed as supply of services as per Schedule II since it involves transfer of right to use any goods for consideration.
4. In the current case, CIPL, Maharashtra also transfers the right to use the equipment for a period of time to third party customers in Maharashtra and other CIPL registrations across India for periodical considerations.
5. In respect of the customers in Maharashtra, the Applicant is considering the transaction as leasing of equipment based on the explanation provided above. CIPL, Maharashtra is discharging GST on the invoice amount which is computed basing on period of usage of equipment.



9. Now the question arises, if such lease transaction can be entered into between different registrations of the same Company. In this regard, the Applicant would like to state that Section 25 of the CGST Act has created a deeming provision, as per basis which two registrations of same Company are considered as distinct person under GST. Accordingly, there can be supply of goods or services between such registrations even in case no consideration is involved as per the entry in Schedule I of the CGST Act.
10. Basing on the joint reading of Section 25 of CGST Act and Schedule I, transactions entered with the third-party customer and transactions entered with GST registrations in other states are kept at par when it comes to determination of taxability under GST. Also, entry in Schedule I or any other provisions in the CGST Act does not restrict the nature of transaction which can be entered into between different registrations of the Company to be considered as taxable under GST. In other words, since the definition of supply contains lease within its ambit, there can be a lease transaction entered into between two different registrations of the same Company similar to the lease transaction entered with third party customer.
11. Accordingly, in the current case, CIPL, Maharashtra can enter into lease transaction with CIPL branches in other States registered under the respective State GST legislation across India say for e.g., CIPL, Karnataka and such transaction would be taxable under GST as a lease transaction between the two branches which are deemed to be distinct entities for the purpose of GST legislation.

Question 2 – If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

12. CIPL, Maharashtra has entered into agreement with CIPL, Karnataka to provide equipment on lease basis for which the consideration would be charged at an agreed rate (i.e. Lease charges or rental per day) depending on number of days of usage of equipment. Invoice in this regard would be raised by CIPL, Maharashtra periodically on the other CIPL branches for the equipment taken on lease by them.
13. As per Rule 28 of CGST Rules read with Section 15 of the CGST Act mentioned in the legal background above, in case of transaction between distinct person, invoice value can be deemed as transaction value in case the recipient is eligible to take full input tax credit. Similar position has been taken by advance ruling authorities in other cases such as **M/S. Specs-makers Opticians Private Limited (2020 (1) TMI 63 - Appellate Authority For Advance Ruling, Tamil Nadu)**
14. In the current case, since CIPL, Karnataka is eligible to take entire input tax credit, the invoice value should be deemed to the transaction value for the purpose of levy of GST.
15. Also, since CIPL, Maharashtra is supplying goods to CIPL, Karnataka pursuant to a lease arrangement and not as a result of transfer of equipment, the lease charges charged by CIPL, Maharashtra should be the transaction value / deemed transaction value chargeable to GST.
16. The Applicant also wishes to highlight the provisions of Section 18(6) of the CGST Act, which states that - "In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher". The intention behind the provision is that the +person should be reversing the proportionate credit availed on capital



goods in case such capital goods are disposed or sold or transferred after usage. However, the said provision would be applicable only in case the person is supplying capital goods as goods and not as service. In the current case since the equipment are provided by CIPL, Maharashtra on temporary lease (similar to transaction of lease entered into between CIPL Maharashtra and third party customers) and not sold or disposed permanently, the provisions of Section 18(6) of the CGST Act would not be applicable.

Question 3 – What are the documents that should accompany the movement of the goods from CIPL, Maharashtra to CIPL, Karnataka?

17. As per Rule 55 of the CGST Rules, when goods are transported without invoice and for reasons other than supply of such goods, a delivery challan is required to be issued for purpose of transportation of such goods.
18. In the present case, the movement of equipment is not in pursuance of supply of equipment but is a supply of service under the CGST Act. Accordingly, a delivery challan is required to be issued for the purpose of transportation of such goods. Also, since the lease charges would be billed basis the number of days of usage by service recipient, the equipment would be transferred to the service recipient at the inception under the delivery challan without discharging taxes and the tax would be paid based service invoice issued periodically.
19. Also Rule 138 of the CGST Rules, requires the consignor to issue e way bill in case the value of goods exceeds INR 50,000. Accordingly, the Applicant would also be issuing e-way bill along with delivery challan in terms of the said Rules.

Question 4 - Whether movement of equipment CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act, and thereby not liable to GST?

20. As discussed above, levy of GST is on supply and the scope of supply is discussed in Section 7 of the CGST Act. Accordingly, it is necessary to determine whether the movement of equipment between CIPL Offices will qualify as supply under Section 7(1) of the CGST Act. Here, it is relevant to understand the meaning of the modes of transfer which have been enumerated in Section 7(1)(a) of the:

- a) **Sale** is defined in in Section 54 of the Transfer of Property Act, 1882 in the following manner:
“a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”

Further, the Hon’ble Supreme Court in the case of **Joint Commercial Tax Officer, Harbour Division, II, Madras v. Young Men's Indian Association (Regd.), Madras (1970) 1 SCC 462** held that

“Where general property in goods belonging to a person is under a contract transferred to another for a price paid or promised, the transaction is a sale”.

- b) The term ‘**transfer**’ has been defined in the Advanced law Lexicon to mean an act or transaction by which property of one person as by him vested in another. Further, in the case of **Sunil Siddarthbai v. CIT (1985) 156 ITR 509 (SC)** the expression ‘transfer’ of property was defined to mean the passing of rights in the property from one person to another.
- c) **Barter** is defined in the Advanced Law Lexicon to mean the exchange of goods or services without the intervention of money.

- d) **Exchange** is defined in Section 118 of the Transfer of Property Act, 1882 to mean:



When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange"

Further, the Hon'ble Supreme Court in the case of **I.T. Commissioner Bombay v. Rasiklal Moneklal, AIR 1989 SC 1333** held as below

"An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other person to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another."

e) A '**license**' is defined under Section 52 of the Indian Easements Act, 1882 to mean:

"Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

f) **Renting**: As per Oxford English Reference dictionary 'rent' means a tenant's periodical payment to an owner or landlord for use of land or premises.

g) The term '**lease**' is defined in Section 105 of the Transfer of Property Act, 1882 as under:

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

h) The term "**disposal**" has been interpreted by the Hon'ble Supreme Court in the case of **Deputy Commissioner of Sales Tax v. Thomas Stephen (1988) 2 SCC 264** to mean transfer of title in goods to any other person and the expression to "dispose" means to transfer or alienate.

21. Basis the above, the Applicant would like to state that all forms of supply enumerated under Section 7(1)(a) of the CGST Act involves either vesting or divesting of rights or creation of an interest or right in property or a thing. Accordingly, in order to constitute supply, the person transferring the goods would be required to transfer its specified interest/right in property to the recipient of such goods.

22. In the present case, the Equipment is owned by CIPL, Maharashtra and will be leased to CIPL Karnataka in furtherance of a lease agreement between such registrations. In case CIPL, Karnataka does not require the equipment, the same would be transferred to CIPL, Tamil Nadu on the basis of instructions received from CIPL, Maharashtra. Such movement to CIPL, Tamil Nadu is in incidence of the obligation as a lessee under the lease agreement entered between CIPL, Maharashtra and CIPL, Karnataka. Further, CIPL, Maharashtra raises an invoice on CIPL, Karnataka for the number of days the equipment remained with it. In such a situation, since there is no transfer of interest of any kind in goods between CIPL, Karnataka and CIPL, Tamil Nadu in respect of the equipment, such a transfer of equipment would not constitute supply under Section 7(1)(a) of the CGST Act and accordingly would not be taxable under Schedule I of the CGST Act. It is only the provision of equipment on lease by CIPL, Maharashtra to CIPL, Tamil Nadu which will constitute as Supply under Section 7 of the CGST Act and attract levy of GST.

23. The Applicant would also like to state that in such a case CIPL, Karnataka is supplying the service to CIPL, Maharashtra by facilitating / arranging the movement of equipment to CIPL, Tamil Nadu. Accordingly, such service of facilitating the movement of equipment would be taxable



under GST in the hands of CIPL, Karnataka in respect of the consideration / fee that it would receive for the service.

Question 5 - With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Karnataka to CIPL, Tamil Nadu?

24. In case of supply of goods for reasons other than by way of supply, a delivery challan is required to be issued in terms of Rule 55 of the CGST Rules.

25. As mentioned above, the movement of equipment between CIPL, Karnataka to CIPL, Tamil Nadu per se is not taxable under GST. Accordingly, it can be said that movement of equipment is for reasons other than by way of supply. In such a case, no invoice is required to be generated under GST and the movement would be made under the cover of delivery challan in terms of Rule 55 of the CGST Rules.

26. Also Rule 138 of the CGST Rules, requires the consignor to issue e way bill in case the value of goods exceeds INR 50,000. Accordingly, CIPL, Karnataka would also be issuing e-way bill along with delivery challan in terms of the said Rules.

II. The Applicant most humbly requests your Honour to please grant a personal hearing in this respect before disposing of the instant application.

III. The Applicant craves leave to add, amend, modify, omit, substitute, replace and delete any of the aforesaid submissions on facts or law both at the time of or before the hearing in respect of the instant application.

Applicant Submission Dated 26.10.2021:-

WRITE-UP ON THE PROPOSED BUSINESS MODEL AND APPLICANT'S INTERPRETATION OF THE QUESTIONS RAISED IN THE ADVANCE RULING APPLICATION

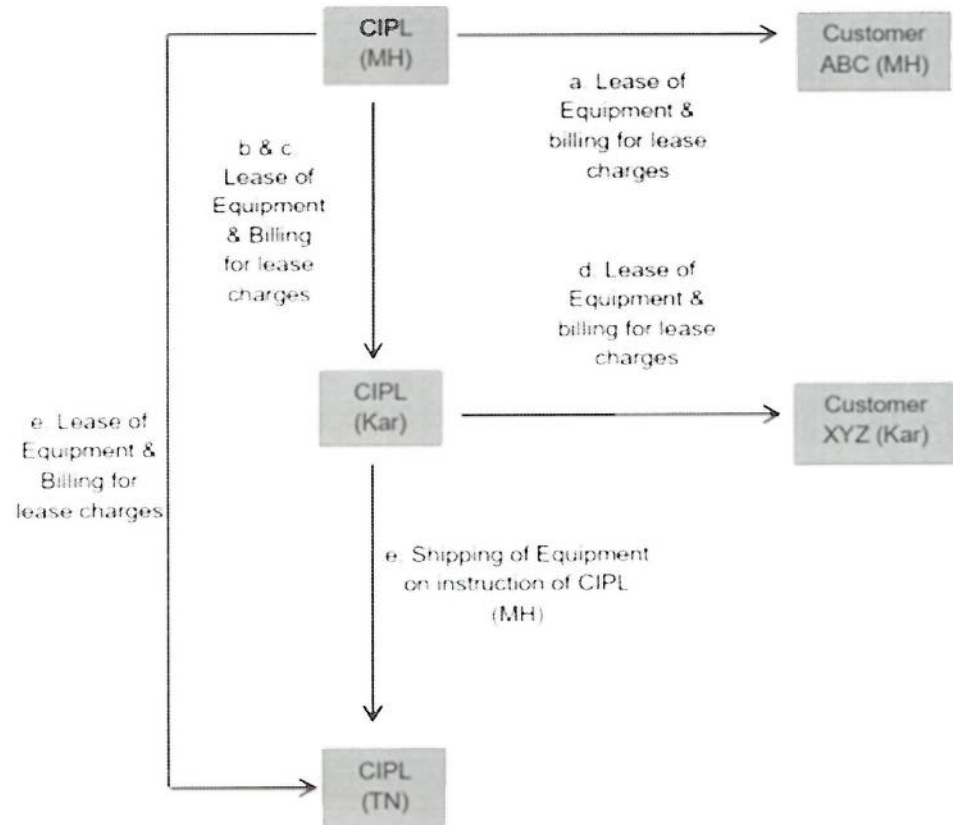
A. OVERVIEW OF THE PROPOSED BUSINESS MODEL:

- A.1. CHEP India Private Limited (CIPL) is primarily engaged in renting of re-usable unit-load equipment for shared use by multiple participants within industrial and retail sector throughout the supply chain, under a business model known as "pooling". It must be noted that equipment are only leased out to the customers for use but the ownership rests with CIPL at all times.
- A.2. A new business model is being proposed by the Company with the following modalities –
- o The ownership of all existing equipment in India shall be consolidated to the Applicant's GSTIN in Maharashtra. As the ownership of equipment would be with the Applicant, it would be entering into agreement with customers for leasing the equipment to them at the agreed lease charges.
 - o The Applicant would also lease the equipment to other CIPL units based on their requirements. For instance, the Applicant would be sending the equipment to CIPL Karnataka under the cover of the delivery challan for lease.
 - o The Applicant would be raising periodical invoices for lease charges (based on number of days of usage) on CIPL Karnataka.
 - o CIPL Karnataka would thereafter, be issuing the equipment to its customers who would be using it for movement of their goods through the supply chain. CIPL Karnataka would be charging lease charges from its customers based on the period of use.
 - o There are chances that other units say, CIPL Tamil Nadu may require equipment from the Applicant which are available with CIPL Karnataka (under lease from CIPL Maharashtra). In such a case, basis the instructions from the Applicant, CIPL Karnataka would transfer



the equipment to CIPL Tamil Nadu. The moment equipment reaches CIPL Tamil Nadu, the Applicant would stop charging CIPL Karnataka and start charging CIPL Tamil Nadu towards lease charges. Further, CIPL Karnataka would charge the applicant consideration for facilitation of movement of equipment to CIPL Tamil Nadu basis the instruction.

A.3. The diagrammatic representation of the transaction is provided below –



B. APPLICANT'S INTERPRETATION

B.1. At the outset, it is submitted that the Applicant had obtained a ruling on similar questions in the State of Karnataka and the Authorities had agreed to the Applicant's interpretation. A copy of the ruling (**order no. KAR ADRG 36/2021 dated 16 July 2021**) is attached herewith as **Annexure 1**. A summary of the questions and Applicant's interpretation on the same is also provided in the ensuing paras for ease of reference.

B.2. **Question 1** – Whether the equipment leased by the Applicant to its other GST registrations located across India (CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act and MGST Act?

- o The definition of 'supply' under Section 7 includes 'lease' within its ambit. Also, as per point 5(f) of Schedule 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" is deemed as service under GST.
- o Section 25 of CGST Act states that two registrations of the same Company shall be considered as distinct persons under GST law. Further, as per Schedule I, transactions between such distinct persons shall be treated as a supply even if it is undertaken without consideration.
- o On the basis of the above, it can be said that the transaction between the Applicant and other branches (CIPL Karnataka) shall be treated as a 'supply' and taxable under GST.



B.3. **Question 2** – If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. Whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

- o Under the proposed model, the leasing charges to be recovered by the Applicant to CIPL Karnataka would be at an agreed rate and invoice in this regard would be raised periodically on the basis of the number of days of use.
- o As per Rule 28 of CGST Rules read with Section 15 of the CGST Act the value of supply in case of transaction between distinct person can be deemed to be the invoice value in case the recipient is eligible to take full input tax credit – Said position upheld by AAAR, Tamil Nadu in the case of **M/S. Specs-makers Opticians Private Limited (2020 (1) TMI 63 - Appellate Authority for Advance Ruling, Tamil Nadu)**.
- o Therefore, since in the current case, CIPL Karnataka is eligible to take entire input tax credit, the invoice value should be deemed to the transaction value for the purpose of levy of GST.
- o Also, since the Applicant is supplying equipment to CIPL Karnataka pursuant to a lease arrangement and not as a result of transfer of equipment, the lease charges charged by the Applicant should be the transaction value chargeable to GST.
- o It is to be highlighted that Section 18(6) of CGST Act which relates to reversal of ITC on supply of capital goods shall not be applicable here since the equipment are not being supplied/ disposed off as goods but are being given on temporary hire to CIPL Karnataka.

B.4. **Question 3** – What are the documents that should accompany the movement of the goods from CIPL Maharashtra to CIPL Karnataka?

- o As per Rule 55 of the CGST Rules, when goods are transported without invoice and for reasons other than supply of such goods, a delivery challan is required to be issued for purpose of transportation of such goods.
- o In the present case, the movement of equipment is not in pursuance of supply of equipment but is a supply of service under the CGST Act. Accordingly, a delivery challan is required to be issued for the purpose of transportation of such goods. Also, since the lease charges would be billed basis the number of days of usage by service recipient, the equipment would be transferred to the service recipient at the inception under the delivery challan without discharging taxes and the tax would be paid based of service invoice issued periodically.
- o Also, Rule 138 of the CGST Rules requires issuing e-way bill in case the value of goods exceeds INR 50,000. Accordingly, the movement may require generation of e-way also.

B.5. **Question 4** – Whether subsequent movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?

Transaction mechanics: (Transaction with respect to leg (e) in the aforesaid diagrammatic representation) – The chronological sequence of the transaction is explained below for ease of understanding –

- (i) Initially, the equipment shall be leased out by the Applicant to the Company's GSTIN in another State say, CIPL Karnataka. The Applicant shall raise periodic tax invoice for lease charges on CIPL Karnataka along with appropriate GST (Step (b) and (c) of the aforesaid diagrammatic representation).
- (ii) Let us assume that the ultimate customer in Karnataka ('XYZ' as per the aforesaid diagrammatic representation) has completed the use of the equipment as per its



requirement and after use, it has returned the same back to CIPL Karnataka. Now at this stage, the equipment is lying with CIPL Karnataka. Since CIPL Karnataka is still in the possession of the equipment, the Applicant shall continue to raise invoice for recovery of lease charges from CIPL Karnataka.

- (iii) It may so happen that the Company's registration in another State (say, CIPL Tamil Nadu) requires the equipment which are lying with CIPL Karnataka. In such a scenario the Applicant i.e. CIPL Maharashtra shall enter into a lease arrangement with CIPL Tamil Nadu for the said equipment and instruct CIPL Karnataka to send the goods to CIPL Tamil Nadu.
- (iv) It must be noted that the responsibility with respect to generating delivery challan, e-waybill etc. For the purpose of moving the equipment to CIPL Tamil Nadu shall be that of CIPL Karnataka and not the Applicant. For facilitating the movement of equipment, CIPL Karnataka may charge a consideration from the Applicant and raise a tax invoice along with GST for recovering the said amount.
- (v) Once the equipment reaches CIPL Tamil Nadu, the Applicant shall stop invoicing CIPL Karnataka for lease rentals and start invoicing CIPL Tamil Nadu for the lease charges on the basis of the new arrangement with it.

Application of GST law:

- o The scope of supply under Section 7(1)(a) of CGST Act includes sale, transfer, exchange, license etc. Within its ambit. It must be noted that all forms of supply enumerated therein either involves vesting or divesting of rights or creation of an interest or right in property or a thing. Accordingly, in order to constitute supply, the person transferring the goods would be required to transfer its specified interest/right in property to the recipient of such goods.
 - o In the present case, the equipment owned by the Applicant is originally leased to CIPL Karnataka in pursuance of a lease agreement between such registrations. The equipment shall move to CIPL Tamil Nadu from CIPL Karnataka on the basis of instructions received from the Applicant. Such movement to CIPL Tamil Nadu is in incidence of the obligation as a lessee under the lease agreement entered between the Applicant and CIPL Karnataka. There is no transfer of interest of any kind in goods between CIPL Karnataka and CIPL Tamil Nadu in respect of the equipment. Hence, it cannot be said that there is a supply between CIPL Karnataka and CIPL Tamil Nadu in case of such movement.
 - o It must rather be noted that in such a case, CIPL Karnataka is supplying a service to the Applicant by facilitating the movement of equipment to CIPL Tamil Nadu. Accordingly, such service of facilitating the movement of equipment would be taxable in the hands of CIPL Karnataka.
- B.6. **Question 5** – With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL Karnataka to CIPL Tamil Nadu?
- o Since the movement is for reasons other than supply of goods, a delivery challan shall be required to be issued in terms of Rule 55 of CGST Rules. No tax invoice shall be required for movement.
 - Also, as per Rule 138 of the CGST Rules, the movement may involve issuing e-way bill in case the value of goods exceeds INR 50,000.

Applicant Submission Dated 15.06.2022: -

1.1 CHEP India Private Limited (hereinafter referred to as 'CIPL' or 'the Company') is a company registered under the provisions of Companies Act, 1956 and has its principal place of business situated at 3rd Floor, Aver Plaza, Plot - B13, Opposite Citi Mall, New Link Road, Andheri (West), Mumbai - 400 053. It is engaged in the business of leasing of pallets, crates



and containers and is registered under the GST law bearing registration number - 27AADCC3230A1ZF.

- 1.2 This is with reference to the personal hearing held on 14 June 2022 with respect to the advance ruling application filed by the Company under Section 97 of Central Goods & Services tax Act, 2017 ("CGST Act"), the Company had filed on the GST portal on 17 March 2021 bearing ARN no. AD2703210325636.
- 1.3 During the personal hearing, a detailed explanation was provided with respect to the proposed business model of the Company, specific transactions to be undertaken under the new model and the Company's interpretation of the questions raised in the advance ruling application. In regard to the same, your goodself had requested the Company to submit inter-unit Memorandum of Understanding (MoU), if any entered within the Company for the leasing transaction between CIPL Maharashtra and other GSTINs.
- 1.4 In this regard, the Company hereby submits a document containing broad contours of the MoU which is proposed to be entered among different GSTINs of the Company in the new business model (Annexure 2). It must however be noted that since it is still a proposed model, no MoU has actually been executed between the different GSTINs of the Company till now.
- 1.5 With the aforesaid submissions, the Company believes that all documents required for rendering a ruling has been submitted. Accordingly, it is prayed before your goodself to provide a ruling at the earliest. In case any further clarifications are required, the Company would be pleased to submit the same.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

No contention is filed.

04. HEARING

Preliminary e-hearing in the matter was held on 12.10.2021. Authorized representatives of the Applicant, Shri. Harshit Jain, learned CA, Shri. Sachin Agarwal, Shri. Sarvesh Saraogi and Shri. Manoj Rathi were present. The Jurisdictional Officer was absent. The applicant was asked to produce copies of sample agreements/documents explaining the exact nature of transactions. The question no. 3 and 5 were not admitted, as same were not within the scope of Advance ruling. What documents to accompany movement is not covered by scope of section 97 of the GST Act. The application was admitted and called for final hearing. Final e-hearing was held on 14/6/2022. The Authorized representative of the applicant, Shri.Sachin Agarwal, Learned Partner and Shri. Ravi Banthia, Learned Director were present. The Jurisdictional officer was absent. On 14/6/2022 it is directed to the Applicant to produce agreement between the other state branch and the Maharashtra branch or head office; regarding lease. Further final e-hearing is held on 15.11.2022. Shri. Sarvesh Saraogi, Manager, Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer was absent. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

Question 1 - Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by CHEP India Private Limited (hereinafter referred to as "CIPL" or "the Applicant") located and



registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act?

The GST is leviable on supply of goods or services. The definition of supply is wide and includes "lease" within its ambit. Also, as per point 5(f) of Schedule 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" is deemed as service under GST. The applicant has rightly referred to Ind AS 116 and also referred to Section 105 of the Transfer of Property act, 1882, in this respect. Accordingly, any lease transaction is deemed as supply of services as per Schedule II, since it involves transfer of right to use the goods for a consideration. In the current case, CIPL, Maharashtra transfers the right to use the equipment for a period of time to third party customers in Maharashtra and other CIPL registrations across India for periodical considerations. In respect of the customers in Maharashtra, the Applicant is considering the transaction as leasing. CIPL, Maharashtra is discharging GST on the invoice amount which is computed on the basis of period of usage of equipment (as per pleadings made by the applicant). But the question asked is if such lease transaction can be entered into between different registrations of the same Company, whether it is covered by the scope of supply. In this regard, the Applicant has rightly stated that the Section 25 of the CGST Act has created a deeming provision whereby two registrations of the same Company are considered as distinct person under GST. Accordingly, as per the entry in Schedule I of the CGST Act, there can be supply of goods or services between such registrations even in case no consideration is involved. The applicant has submitted in its pleadings as under:

Basis the joint reading of Section 25 of CGST Act and Schedule I, transactions entered with the third-party customer and transactions entered with GST registrations in other states are kept at par when it comes to determination of taxability under GST. Also, entry in Schedule I or any other provisions in the CGST Act does not restrict the nature of transaction which can be entered into between different registrations of the Company to be considered as taxable under GST. In other words, since the definition of supply contains lease within its ambit, there can be a lease transaction entered into between two different registrations of the same Company similar to the lease transaction entered with third party customer.

Accordingly, in the current case, CIPL, Maharashtra can enter into lease transaction with CIPL branches in other States registered under the respective State GST legislation across India say for e.g., CIPL, Karnataka and such transaction would be taxable under GST as a lease transaction between the two branches which are deemed to be distinct entities for the purpose of GST legislation."

We agree with the view taken by applicant and accordingly held that it is supply.

Question-2:- If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

The applicant in its basic pleadings as contended as under, in its statement of facts:



“CIPL is contemplating certain changes in its existing business model. The broad business mechanics of the proposed business model would be as follows:

- a. CIPL would be consolidating the ownership of all the equipment into the state of Maharashtra. Currently, while majority of the procurements / manufacture happen in Maharashtra, some of the procurements are also done from other states.*
- b. As the ownership of equipment would be with CIPL, Maharashtra, it would be entering into the arrangement with the customer and all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges.”*

Since, this business model is yet not operational and how it will become operational is not known, we do not have any actual facts and figures to answer this question. This question becomes more like hypothetical question.

However, one fact is clear that applicant *would be entering into the arrangement with the customer and all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges.* So naturally, the rates to be applied for leasing to equipment to the other customers and to the branches of applicant would be same or similar. If such rates (for leasing of equipment) are by and large same or similar there would not be any problems as such. Since in leasing transactions the equipment is returned back to the original person who leased the equipment (after completion of lease period), the rate of leasing is normally fixed by such lessor at such a price which would cover the cost plus other overheads and profit. So, whatever rates are fixed for normal customer, if applied to branch, would not cause any serious problem. Hence, looking at the peculiar nature of business of present applicant, answer to the question asked is that, the value on which GST has to be charged would be the lease charges which would be charged by the other branch to the ultimate customer in other state in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules, or such other normal value which would be derived after taking into consideration the rate which is equal to such lease rate which is normally charged to customers. When the movement (from Maharashtra to other state) happens because of order by customer at the other state branch, the value as offered by the ultimate customer for providing lease services is available and that may be considered for adopting value of supply for branch transfer.

Question no 3 and 5 : not admitted, so not answered.

Question-4:- Whether movement of leased equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?

Answer: The main question involved here is not related to Maharashtra. This question raised by the applicant is with respect to movement of goods located in a State other than Maharashtra. As per clause (a) of section 10 of the Integrated Goods and Service Tax



Act 2017, the *Place of supply of goods other than supply of goods imported into, or exported from India.*—

(1) *The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—*

(a) *where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;*

Further as per sub-section (1) of section 8 of the Integrated Goods and Service Tax Act 2017,-

8(1) Intra-State supply. — Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply.

Further, a reference can be made to Section 22 of the CGST Act. It reads as under:

22. (1) *Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.*

From the above sections, it is clear that it is an origin based provision, requiring the registration to be taken in that State. After conjoint reading of the above provisions mentioned above, it appears that if the situs of supply is determined on the basis of movement of goods and delivery of goods. In the present case apparently the applicant is having GSTN number in all other States. The applicant has also obtained the Advance Ruling order in Karnataka State in similar matter.

Further, it is also important to go through the provision of section 96 of the Central Goods and Service Tax Act 2017 which states that the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory. We now refer to the decision passed by the Rajasthan Advance Ruling Authority vide its order RAJ/AAR/2018-19/29 dated 09.01.2019 in the case of M/s K. M. Trans Logistics (P) Ltd., wherein the issue raised was whether having vacant lands on lease for parking of trailers/trucks at various cities for operational purpose required registration in various cities when billing, control, registered office, head office and management was centralized located at Jaipur. The said authority observed that, *“The authority for advance ruling is created under SGST/UTGST Act and thus rulings are applicable within the particular state only, it is for this reason that question*



relating to registration of vacant lands taken on lease by the applicant is out of purview of the authority and hence no ruling is given on this aspect".

Thus, in view of the above discussions, if the situs of transaction in question is not within the state of Maharashtra, then as per provisions of section 96 of the Central Goods and service Tax Act 2017 (and similar provision under the MGST Act), the Maharashtra Advance Ruling Authority cannot acquire the jurisdiction over the questions raised, hence no ruling can be given on this question.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question-1:- Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by CHEP India Private Limited (hereinafter referred to as "CIPL" or "the Applicant") located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act and MGST Act?

Answer:- Yes

Question-2:- If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?

Answer:- As per the discussion made above.

Question-3:- What are the documents that should accompany the movement of the goods from CIPL, Maharashtra to CIPL, Karnataka?

Answer:- Not admitted.

Question-4:- Whether movement of leased equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?

Answer:- Not answered in view of discussion made above.



Question-5:- With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Karnataka to CIPL, Tamil Nadu?

Answer: - Not admitted.




M. RAMMOHAN RAO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.