

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 B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAACB7293D1ZQ
Legal Name of Applicant	B. G. Shirke Construction Technology Pvt. Limited
Registered Address/ Address provided while obtaining user id	No. 72-76, Industrial Estate, Mundhwa, Pune
Details of application	GST-ARA, Application No. 01 Dated 01.04.2019
Concerned officer	State Jurisdiction - PUNE-LTU-2
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing
B Description (in brief)	Sale of aircraft
Issue/s on which advance ruling required	(i) Classification of goods and/or services or both
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. B. G. Shirke Construction Technology Pvt Ltd**, the applicant, seeking an advance ruling in respect of the following question.

What is the applicable rate of GST on sale of aircraft by an NSOP holder to a private company who have applied for NSOP license, to be used for purposes such as corporate leisure, pilgrimage, cargo chartered flights?

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

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

1. B.G Shirke Construction Technology Private Limited (hereinafter referred to as the "Applicant") is, inter alia, engaged in business of construction of infrastructure projects. The applicant has an aviation chartering division. The applicant is operating aircrafts under non-scheduled operators permit (NSOP). The applicant is duly registered with the Goods and Service Tax Department. A copy of the certificate of registration is enclosed herewith as **Annexure 4**.
2. The applicant is, in the instant case, intends to sell one of its aircraft to M/s K Air (purchaser). K-Air is registered as Travian Flight Services (P) Ltd. It is a private unlisted non-governmental company incorporated on 30.06.2006.
3. K-Air wishes to purchase one Hawker 800XP (pre-owned) jet aircraft from the applicant. K-Air intends to operate the same for: (i) carrying passengers and (ii) for medical evacuation. The same will be carried out in Kannur, Trivandrum and Kozhikode Airports.
4. However, K-Air does not have the permit to operate as non-scheduled operator. K-Air has applied to Ministry of Civil Aviation for grant of no objection certificate (NOC) in order to operate non-scheduled passenger air transport services. K-Air has filed an application on 10.10.2018. K-Air is expected to receive clearance from the Ministry on or about 23.03.2019. The NOC will allow K-Air to import aircrafts, develop the infrastructure, prepare the necessary documents, recruit and train manpower etc. Copy of said application is enclosed as **Ann. 5**.
5. K-Air has, accordingly, presented the application seeking advice on applicable GST rate for purchase of Aircraft (Hawker 800XP-VT-VPA) to GST authorities, viz. Dy. Commr.(GST), Churchgate, Mumbai, copy of which is enclosed as **Annexure 6**.

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the question(s) on which advance ruling is required:

1. At the outset, the applicant submits that the aircraft sought to be procured by K-Air is not used for personal use. Accordingly, in the view of the applicant, the goods should attract GST @5% under Chapter heading 8802 2000.

Classification under GST

- 2.1 K-Air does not have license for non-scheduled operator services. In order to qualify for non-scheduled operator services, an operator has to possess at least one flight/aircraft. It is for this reason that K-Air intends to purchase the said aircraft from the applicant.
- 2.2 According to Civil Aviation Requirement (CAR) issued on 01.06.2010, non-scheduled operator services is defined as air transport service, other than a scheduled air transport service being operated for carriage of passengers, mail and goods, and includes charter operations.
- 2.3 Section 3(49) of Aircraft Rules, 1937 inter alia provides that scheduled operator services refer to those operators who operate transport services in accordance with a fixed schedule. Relevant portion of Section 3(49) of Aircraft Rules, 1937 is reproduced here as under -



"(49) Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public"

2.4 As per Notfn No. 1/2017-CT(Rate) & Notfn No. 2/2017 CT(Rate) dt 28.06.2017, aircrafts other than the ones used for personal purpose will attract GST rate of 5% while aircrafts for personal use will attract GST of 28%. Chapter No 88 of GST Tariff deals provides for the GST rate for aircrafts used for commercial as well as personal use as specified under the notifications mentioned above.

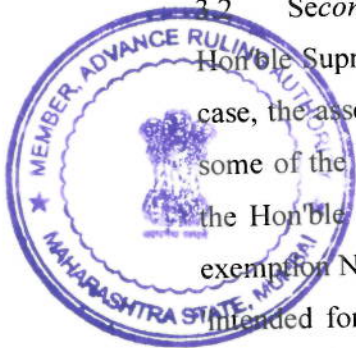
2.5 The issue, in the instant case, is whether K-Air is going to use the chartered flights for purposes other than personal use.

Personal use

3.1 *First*, in the instant case, the applicant submits that the purchaser i.e. K-Air intends to operate only chartered flights. They shall not be operating the chartered flights for personal use. The aircraft sought to be purchased from the applicant is intended to be used only for carrying passengers and for medical evacuation purposes. K-Air intends to use the aircraft sought to be purchased, primarily in providing services of corporate leisure, pilgrimage, cargo chartered flights etc. They shall not use any of their chartered flights for personal use.

3.2 *Second*, the term "use" would be intended to be used. This view has been taken by the Hon'ble Supreme Court in BPL Display Devices Ltd vs. CCE - 2004 (174) ELT 5 (SC). In that case, the assessee imported picture tubes to be used in the manufacture of televisions. However, some of the imported picture tubes were damaged during transit and in respect of those goods, the Hon'ble Supreme Court took a view that such goods should not be denied the benefit of exemption Notification No. 13/97-Cus and the phrase 'for use' has to be construed to mean 'intended for use' identical view has been taken by the Supreme Court in Commissioner vs. National Organic Chemical Industries Ltd - 2002 (142) ELT A280 (SC) and State of Haryana vs. Dalmia Dadri Cement Ltd - 1987 (Suppl) SCC 679.

3.3 *Third*, personal use refers to use for one's own purposes. 'Personal Use' would mean private use. The expression "personal use" is used in contradistinction with official or public use. "Personal use" means "private use". Personal use, in the context of the above entry, would mean something which would be applied for private application only. Anything for personal/private use or for personal consumption will entail an exclusive right of the owner over it. It cannot be transferred. It cannot be alienated for a consideration. For eg: Permanent Account Number (PAN) belongs exclusively to a person who possess it. It cannot be used by anyone else. Similarly, "personal bank account" would imply that the bank account is intended to be operated



& used by the holder only. Likewise, "personal assistant" would mean that the said person would be available at the disposal of his/her senior/boss only. A personal loan' would signify that the same can be used and applied for any personal/private purpose. There are examples a galore.

However, in the instant case, the factual position is to the contrary. The aircraft is not for personal use. The same is intended to be purchased only to be let out and be used for by the general public. In support of this submission, the applicant wishes to place reliance on judgment of the Hon'ble Bombay High Court in *Municipality of Dhulia v. New Pratap Spinning, Weaving and Manufacture Co. Ltd.* reported at AIR 1935 Bom. 415.

3.4 Third, the term "private aircraft" has been defined under Aircraft Rules, 1937. According to Rule 3(43) of the Aircraft Rules, 1937, private aircraft means 'all aircraft other than aerial work aircraft or public transport aircraft'. Section 3(45) of the Act defines public transport aircraft as 'all carriages of persons or things effected by aircraft or a remuneration of any nature whatsoever, and all carriage of persons or things effected by aircraft without such remuneration if the carriage is effected by an air transport undertaking'. Section 3(1A) defines 'aerial work' as any aircraft operation undertaken for an industrial or commercial purpose or any other remunerative purpose, but does not include operation of an air transport service. In the instant case, the aircraft sought to be purchased is not a private aircraft as defined under section 3(43) under Aircraft Rules, 1937. Thus, the same cannot be intended to be private or personal.

4. In view of the above submissions, it is clear that the dominant intention of the purchaser is not to utilize the aircraft for personal use. Consequently, it would attract GST @5% under chapter heading 8802 2000.

Additional Submission:-

1.1 The applicant has an aviation chartering division. The applicant is operating aircrafts under non-scheduled operators permit (NSOP). The applicant, in the instant case, intends to sell one of its aircraft to M/s K-Air (purchaser). K-Air wishes to purchase one Hawker 800XP (pre-owned) jet aircraft from the applicant. It is an 8 seater air craft. Details of the aircraft sought to be purchased is enclosed herewith as **Annexure**

1.2 As a buyer of one Hawker 800XP (pre-owned) jet aircraft from BGSCTPL, K-Air intends to operate the same for: (i) carrying passengers and (ii) for medical evacuation. The same will be carried out in Kannur, Trivandrum and Kozhikode Airports. K-Air has applied to Ministry of Civil Aviation for grant of no-objection certificate (NOC) in order to operate non-scheduled passenger air transport services. K-Air has filed an application on 10.10.2018. K-Air is expected to receive its clearance from the Ministry on or about 23.03.2019. The NOC will allow K-Air to import aircrafts, develop the infrastructure, prepare the necessary documents, recruit and train manpower etc.

2.1 At the outset, in its reply, the Respondent contends that K-Air does not have license for non-scheduled operator services from the competent authority. In order to qualify for non-scheduled operator services, an operator has to possess at least one flight/aircraft. It is for this purpose that K-Air decided to purchase aircraft from the applicant. The said contention is incorrect.

2.2 The applicant submits that K-Air has applied for an NOC as per Section 5.1.1 of the Civil Aviation Requirements dated 01.06.2010. The NOC granted by Ministry of Civil Aviation is valid for a period of three years. It is within this period that the purchaser has to obtain an NSOP license for operation of nonscheduled air transport. K-Air has not purchased the aircraft yet as it was waiting for the competent authority to grant them the initial NOC for operation of non-scheduled air transport. Relevant extract of Section 5 is reproduced as under for reference

"5. PROCEDURAL REQUIREMENTS Broad guidelines for issue of a Non-Scheduled Operator's Permit are contained in applicable Air Operator Certification Manual (CAP3300/ CAP 3400).

5.1 Grant of Initial No-Objection Certificate Import of Aircraft 5.1 GRANT OF NO-OBJECTION CERTIFICATE/IMPORT OF AIRCRAFT

5.1.1 *An applicant desirous of obtaining an NSOP shall first apply for the No Objection Certificate (NOC). The application (eight copies) for this purpose shall be submitted to the Ministry of Civil Aviation, New Delhi in the proforma prescribed in Annexure I, along with a fee of Rs. 1,75,000/- (Rupees One Lakh Seventy Five thousand only to be paid in a manner as prescribed by Director General in favour of the Pay and Accounts Office, Director General of Civil Aviation, Ministry of Civil Aviation, New Delhi. The applicant shall also submit along with his application the particulars of Board Members of the Company in pro-forma given at Annexure II. The applicant should also give the type and number of aircraft proposed to be imported/acquired for the purpose of non-scheduled operations. If the applicant has already finalized arrangements for procurement of these aircraft, he may furnish the details as per Annexure III.*

5.1.2 Along with his application, an applicant for NSOP will be required to submit a project feasibility report as per Annexure V and give a declaration that he complies with the guidelines given in AIC No. 7/2008 dated 30.06.2008 on foreign direct investment in the civil aviation sector. Further, before making any change in FDI, he shall notify the same to Ministry of Civil Aviation at least one month before such change. Furnishing of wrong information in respect of any of the prescribed guidelines at any stage shall make the operator liable for suspension/cancellation of the NSOP.

5.1.3 *After such scrutiny as is considered necessary, as regards eligibility, financial soundness, project feasibility, security clearance of Board members, etc, the applicant may be issued the initial NOC by the Ministry of Civil Aviation along with approval for import of aircraft, subject to any conditions that the Ministry deems fit to impose. Acquisition of aircraft*



by local purchase/lease within the country shall also require the approval of the Ministry of Civil Aviation. The aircraft shall meet the requirements of paragraph 7.3 of this CAR.

5.1.4 The NOC shall be valid for a period of three years from the date of issue and shall stand automatically cancelled if the applicant does not take effective steps to obtain the Non-Scheduled Operator's Permit within this period.

5.1.5 In case the application for initial NOC did not contain a request for acquisition of aircraft, the applicant may apply for permission for import or local acquisition of aircraft to the Ministry of Civil Aviation as per Annexure IV after the issue of initial NOC.

5.1.6 Based on the approval granted by the Ministry, the applicant shall apply in the proforma prescribed in Annexure IV (Part II) to the DGCA, New Delhi for the issue of NOC to import the aircraft. After such scrutiny as may be considered necessary, the DGCA may grant the applicant NOC for acquisition/import of the aircraft upon being satisfied that the applicant has achieved a reasonable level of preparedness. The operator shall be required to show his preparedness in accordance with provisions of paragraph 7 by filling the checklist given at Annexure IX. Additionally, he may also be called upon to demonstrate the same at a preparedness meeting convened by DGCA.

5.1.10 The aircraft imported for NSOP purposes shall not be disposed off to a party within India intending to use it for private purposes, unless the clearance from Customs Authority is obtained".

2.3 On plain perusal of the above, it can be well understood that the application process for an initial NOC for operation of non-scheduled air transport services does not require the purchaser to be in actual possession of the aircraft. The use of the word 'proposed to be imported' as used in Section 5.1.1 clarifies that the same. It is only after an initial NOC is granted by the Ministry of Civil Aviation that the purchaser needs to apply for a NSOP permit within three years. It is only when the purchaser applies for NSOP license that it will require to produce evidence of actual possession of aircraft. The same is also clarified vide section 4 of the Civil Aviation Requirements, 2000 dated 01.02.2010. Relevant extract of the same is reproduced as under for reference

"4.2 An applicant for the grant of an NSOP shall: a) be in possession of at least one aircraft, either by outright purchase or on lease (without crew), which shall be registered in India and shall have a valid Certificate of Airworthiness in Normal Passenger Category.

b) have a minimum Paid Up Capital as given below:

Fleet Strength	Minimum Paid up Capital (Rs. in Crores)
(i) Upto 2 aeroplanes/helicopters	2.00
(ii) Between 3 and 5 aeroplanes/helicopters	5.00
(iii) Between 6 and 10 aeroplanes/ helicopters	10.00
(iv) Above 10 aeroplanes/helicopters	15.00



The applicant shall submit a certificate from the banker /chartered accountant to confirm the paid up capital of the company".

2.4 After the above hearing was held on 24.04.2019, K-Air has received (vide Letter F.No.AV-14015/20/2018-DT dated 23.04.2019), initial NOC from the Ministry of Civil Aviation, Government of India to carry out operations of non-scheduled air transport. The said NOC is valid for a period of three years. A copy of the said NOC is enclosed herewith as **Annexure 2**. The said NOC should put matters beyond any doubt. Based on the same, it can be safely concluded that the aircraft would be used for non personal use.

3.1 However, in its reply, the Respondent, further, contends that after the NSOP license is granted by the competent authority is the non-scheduled operator barred/deprived from the right to use the aircraft for personal use. Hence, according to the Respondent, even after obtaining the NSOP license, the said aircraft can be used for personal use as and required. Hence, in a situation where the aircraft can be used for both personal as well as other than personal use, it would attract tax @28%. This submission is incorrect, in law. There is a fundamental flaw in the said argument.

3.2 **First**, it is submitted that such as situation has not arisen. Hence, the same is purely speculative. A ruling cannot be issued on such speculative arguments. Even if it were to be accepted as true and correct, even in that situation, so as long as the aircraft is intended for other than personal use, it would attract tax @5%. We re-iterate the submissions made in our application and for sake of brevity, the same are not repeated.

3.3 **Second**, it is not an end use based notification. If the Revenue is in a position to prove that the aircraft has been used for personal use, there are provisions in the statute for recovery and collection of tax. However, the present argument is purely presumptive and anticipatory in nature. It is like saying that a person may become a thief in future and hence, let us chop his hands now".

3.4 **Third**, it is for the licensing authority to examine this issue. It is the Ministry of Civil Aviation which has issued the NSOP. If there is any violation of the conditions of the license, it is for the Ministry of Civil Aviation to take appropriate action, in law, against the erring entity. The Revenue, in the instant case, cannot go beyond the license and propose to deny benefit of serial No.244 of the above notification. The Hon'ble Supreme Court in the case of **Titan Medial Systems Private Limited V/S CC 2003 (15) ELT 254 (SC)** held thus:

13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a license that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a license, the appellants set



out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the license. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.

The above view has been re-iterated by the Hon'ble Bombay High Court in **Autolite (India) Limited V/s Union of India 2003 (157) ELT 13 (Bom)**.

3.5 Fourth, if the above interpretation canvassed by the Revenue were to be accepted as correct, it would lead to absurd results. No aircraft would be entitled for benefit under serial No.244 of Notification No.1/2017 ibid. Thus, the said entry in the act would become redundant. It is well settled that any interpretation that renders a provision of la redundant or otiose should be avoided. The legislature is a perfect legislative body. It is presumed to know all the laws when it enacts any particular legislation.

In **Union of India V/s Hansoli Devi (2002) 7 SCC 273** the Hon'ble Supreme Court has observed that the legislature never waste's it words or say anything in vain and a construction

which attributes redundancy to legislation will not be accepted except for compelling reasons.

In **Sultana Begum V/s Prem Chand Jain (1997) 1 SCC 373, at page 381**, the Hon'ble

Apex Court has held as under:

15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".



(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose"

... (underlining supplied)

It is well settled that every clause of the statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible to make a consistent enactment of the whole of the statute. A bare mechanical interpretation of words and application of a legislative intent is devoid of concept and purpose will reduce the most of the remedial and beneficent legislation to futility. To be literal in meaning is to see the skin and miss the soul. Words, phrases and rules occurring in a statute are to be read together and not in an isolated manner. The legislation never intends to give one from one hand and take away from other hand. This is precisely what the Revenue seeks to argue in the present case.

4. Thus, in view of the above the applicant submits that the aircraft is not for personal use. Therefore, the applicable rate of GST on it will be 5% and not 28% as contended by the department.

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

"Note on the issue involved in the Advance ruling application"

With reference to above I have to submit that, the applicant dealer M/s B.G.Shirke Construction Technology Pvt. Ltd. Having GSTN 27AAACB729317Q has applied for advance ruling vide above referred application to office the Hon. Advance Ruling Authority,

In connection with the application preliminary hearing notice is issued and it is directed to this office to examine the application and represent the case with legal submission along with the relevant record.

In this regard report is submitted as under.

Brief facts of the case.

The dealer M/s B. G. Shirke Construction Technology Pvt. Ltd. is registered dealer under MGST Act Having GSTN 27AAACB72931ZQ. The registered office of the company is at 72-76, Industrial Estate, Mundhwa, Pune-411036. The principal business activity of the dealer is of construction of infrastructure projects, buildings. Besides this the dealer also undertake the activity of Aviation Chartering. The applicant has an aviation chartering division. So as to do this business the operator needs the permit issued by the Ministry of Civil Aviation, Govt. of India. Such permits are referred as non-scheduled operators permit (NSOP). The applicant dealer is having such permit.

Issue involved in the case



Now the applicant dealer is intending to sell his one aircraft to another dealer le M/s K-Air, which is registered as Travian Flight Services (P) Ltd. Therefore the applicant dealer wants to know **the rate of tax** applicable to sale of air crafts.

Observations

As per notification no. 1/2017-C.T. (Rate) & 1/2017 I.T. (Rate), dated 28-06-2017, the relevant rate of tax on the sales of aircraft is as under

Chapter/ Heading/ Sub heading/ Tarrif item	Description of goods	CGST Rate	SGST Rate	IGST Rate	Cess	Entry No
8802	Other aircrafts (for example, helicopters, aeroplanes) other than those for personal use.	2.5%	2.5%	5%	Nil	Chapter - 1 sr. no. 244
8802	Aircrafts for personal use	14%	14%	28%	3%	Chapter -IV sr. no. 176

From the plain reading of the above Tarrif heading it is clear that rate of tax on the sales of aircraft depends upon for which purpose it is going to be used. When it is to be used for other than personal service then the rate of tax is 2.5 % SGST, 2.5 % CGST or 5% IGST. If the same aircraft is being used for personal use the rate of tax will be 14% SGST, 14 % CGST or 28 % GST along with Cess @ 3%.

According to the applicant dealer, in this case the intending buyer is going to use this aircraft for non-schedule operating services je other than **personal use**.

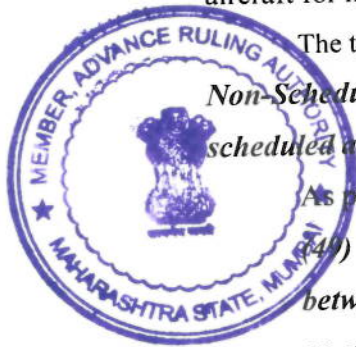
The term non- scheduled operating service is defined as per civil aviation requirement as under
Non-Scheduled air transport services (passenger) means air transport services other than scheduled air transport services as defined in the Rule 3 of the Aircraft Rules, 1937,

As per Civil aviation rules Scheduled transport service is defined as under

(44) **"Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public;**

From the above two definitions it is clear that, scheduled transport service operator means, the operator who is doing the Aviation Chartering activity on regular basis. The time schedule, route; destination and frequency of aerial operation on commercial basis is fixed.

Whereas those operators who are having aircrafts and they too hire it for commercial purposes as when any customer approaches them on the terms and negotiations as mutually decided and agreed upon by the both of them, such operators are called as non-schedule service operator. As their schedule of commercial activity is not fixed.



But the operator who intends to undertake non-schedule service operations needs to obtain the permit from the competent authority i.e from Ministry of Civil Aviation, Govt. of India.

So far rate of tax applicable to the sales of aircraft is concerned it is clear that when the aircraft is used for personal use then rate of tax it has 28% along with cess @ 3%, otherwise if it is used for other than personal use i.e. for commercial purposes whether it be used as such by the scheduled service operators or non-schedule service operators rate of tax will be i.e. 5%.

In the instant case the dealer intends to purchase aircraft for non-schedules transport service. However at the moment he does not have the permit to operate as non-scheduled operator. It is learnt from the applicant dealer that M/s K-Air has applied for getting this permit to Ministry of Civil Aviation, Govt. of India. It is also learnt that he intending buyer is not having/owning any aircraft till date.

But as per civil aviation requirement 17 may2000,

4.3 Before the Non-Scheduled Operator's Permit is issued, an applicant shall:

4.3.1 Be in possession of an aircraft either by outright purchase or through lease. The aircraft shall be registered in India and shall hold a Certificate of Airworthiness in Normal Passenger category. Aircraft acquired and certified in Private category shall not be used for commercial air transport services. For leased aircraft, a copy of the lease deed shall be filed with DGCA;

4.3.2 Have his own maintenance and repair facilities for carrying out the maintenance as per DGCA requirements specified in CAR Sec-2 Airworthiness OR

Make suitable arrangements with any other DGCA approved maintenance organization, for all maintenance including line maintenance of the type of aircraft. The operator shall provide to DGCA a copy of the agreement made with the maintenance agency in this regard. A suitable person in the organization and acceptable to DGCA shall be designated to ensure that the maintenance is carried out as per DGCA approved program;

In this case it is learnt from the applicant dealer that the intending buyer is not having/owns any aircraft till date. But he has applied for getting such permit to the competent authority.

Here it needs to clarify one aspect that whether after getting such required permit as a non-scheduled service operator from the competent authority, this non-scheduled service operator is barred/deprived from the right to use this aircraft for personal use. If answer to this question is in negative then it can be said that still after getting such permit for non-schedule service operator the aircraft can be used for personal use as and when required. So in this situation the air craft can be used for both the purposes i.e. personal and other than personal and in that situation rate of tax would be 28 % along with cess @ 3%.

Till the moment intending buyer M/s K-Air is not getting such permit (NSOP) from the competent authority it cannot be said that the air craft will be used for other than personal use. In view of this the rate of tax will be 28 % along with cess @ 3%.



04. HEARING

Preliminary hearing in the matter was held on 24.04.2019. Sh. Bharat Raichandani, Advocate appeared and requested for admission of their application. Jurisdictional Officer Sh. V. K. Magar, Deputy Commr. of S.T. (E-623) LTU-, Pune appeared .

The application was admitted and called for final hearing on 03.08.2019, Sh. Bharat Raichandani Advocate appeared made oral and written submissions. Jurisdictional Officer Sh. V. K. Magar, Deputy Commr. of S.T. (E-623) LTU, Pune also appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

The applicant has submitted that they are intending to sell one aircraft to M/s K. Air (purchaser), a private unlisted non-governmental company. They have submitted that the said aircraft is being purchased by K. Air for commercial purposes and not for personal use. Hence such sale of aircraft for by them to the purchaser will attract GST rate of 5% as per Notification No. 1/2017-CT (Rate) and Notification No. 2/2017 CT(Rate) dated 28.06.2017. The entire submissions made by the applicant centers around their understanding that the aircraft is intended to be used only for commercial purposes by the purchaser.

As per Serial No. 244 of Schedule I of Notification No. 1/2017-CT (Rate) dated 28.06.2017 as amended from time to time, Other aircraft (for example, helicopters, aeroplanes), other than those for personal use, falling under Chapter 8802 of the GST Tariff, attract 5% tax under GST laws.

As per Serial No. 176 of Schedule IV of Notification No. 1/2017-CT (Rate) dated 28.06.2017 as amended from time to time, Aircrafts for personal use, falling under Chapter 8802 of the GST Tariff attract 28% tax under GST laws.

The applicant has submitted that the purchaser of their aircraft, namely, K-Air has received an initial NOC, valid for a period of three years, from the Ministry of Civil Aviation, Government of India on 23.04.2019 to carry out operations of non-scheduled air transport and therefore the said aircraft will not be used for personal purposes. We find that the NOC is received only to enable K-Air to apply for NSOP license. Hence at this point of time it is not possible to determine whether the said aircraft will be used for personal purposes or otherwise by the purchaser. We also find that the evidences submitted by the applicant do not conclusively establish that the said aircraft will not be used for personal purpose. In fact it cannot be determined at this point as to the purpose of use of the aircraft that is contemplated to be sold to K-Air.

As can be seen from above Serial No. 244 of Schedule I of Notification No. 1/2017-CT (Rate) dated 28.06.2017 is in respect of Other aircraft (for example, helicopters, aeroplanes), other than those for personal use, falling under Chapter 8802 of the GST Tariff and Serial No.



176 of Schedule IV of Notification No. 1/2017-CT (Rate) dated 28.06.2017 is in respect of Aircrafts for personal use, falling under Chapter 8802 of the GST Tariff.

Since at this point of time, the intended use of the aircraft to be sold is not known and is only speculated as use, by the applicant, for non-personal purpose by the purchaser we will not be able to answer their question. However we are of the opinion that Serial No. 244 mentioned above will be applicable when the said aircraft will be for other than those for personal use and Serial No. 176 mentioned above will only be applicable if the said aircraft will be for personal use. Hence at this point of time it is not possible for us to answer their question due to lack of sufficient and conclusive information supplied by the applicant.

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

ORDER

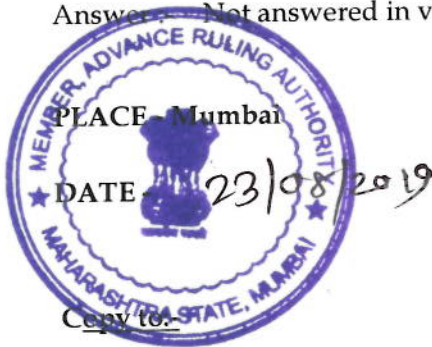
(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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

Question: - What is the applicable rate of GST on sale of aircraft by an NSOP holder to a private company who have applied for NSOP license, to be used for purposes such as corporate leisure, pilgrimage, cargo chartered flights?

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



sd
B. TIMOTHY
(MEMBER)

sd
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

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

[Signature]
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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.