



## CROSS CHARGE VS INPUT SERVICE DISTRIBUTOR ('ISD')

### **Continuous conundrum under GST law- Recent Ruling of Maharashtra AAAR for Cummins India Limited intensify debate**

Under **Goods and Services Tax ('GST')** law, scope of supply is very wide and inclusive. It includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business amongst other things.

Even "facilitation" of any service is a taxable supply under GST law. Such facilitation is common in various branches/units ('BOs/Units') of a company with in the same Permanent Account Number ('PAN') or various companies forming part of a group. Under GST law, in case of distinct persons (illustratively, head office and branch of same company) and related persons (two companies part of same group), facilitation is leviable to GST even when there is no consideration. It is quite common that a single contract is executed by head office with service provider for supply of services directly to BOs/Units across India. It is also a business phenomenon that for effectively discharging its corporate functions, head office might receive various supplies of goods/services (e.g. Rent, Security services etc.) or engage employees who works for company as a whole. However, whether head office should charge GST on cost/expenses allocated, including salary of employees working at head office, to other BOs/Units or not, and/or whether head office is entitled to avail and utilize credit of GST paid to third party vendors for supplies made directly to BOs/Units, and/or ISD registration is compulsory for head office are always been a contentious issue.

Legal debate on these issues were incepted from the time when Model GST law was released and it is continued till date. **There are few advance rulings on the subject and the recent ruling by Maharashtra Appellate Authority for Advance Ruling ('MAAAR') on application filed by Cummins India Limited (Order No. MAH/AAAR/AM-RM/01/2021-22 dated 21.12.2021) further intensify this debate.** The present alert seeks to highlight the findings and rulings of 'MAAAR' on issues mentioned above.

### **Maharashtra AAAR ruled that:**

1. Facilitation of common input services received by Head Office (HO) from third-party vendors on behalf of Branch Offices (BOs) will qualify as supply of service. However, the cost of said common input services availed on the behest of BOs/Units and allocated to the branches by the HO will not attract the levy of GST as the said costs have been incurred by the HO in the capacity of pure agent.
2. Allocation and recovery of salary of employees of HO from BOs/Units will be subject to GST.
3. HO is not entitled to avail and utilize the credit of tax paid to third party service vendors for the common input services received by it on behalf of BOs/Units, HO is bound to take ISD registration.

### **Following are the relevant facts, discussions, findings and conclusions made in the ruling:**

**"Cummins India Limited** approached the AAAR Maharashtra against the ruling passed by the Maharashtra Advance Ruling Authority vide Order No **GST-ARA-66/2018-19 B-162** dated **19.12.2018** for seeking reply to the below mentioned questions, the AAAR Maharashtra vide

its Order No. **MAH/AAAR/AM-RM/01/2021-22** dated **21.12.2021** partially modifies the earlier ruling passed by the Maharashtra Advance Ruling Authority and provides the below mentioned answers to the questions asked by the Appellant:

S.No.	Relevant facts & discussions	Finding and Conclusion
a.	Whether availment of common input supplies by HO on behalf of BOs/Units registered as distinct person <b>and further allocation</b> of the cost incurred for same to such other units qualifies as supply and attracts levy of GST?	It was held that the impugned activities of providing facilitation services to their BOs/Units by way of availment of the common input services by the Appellant' HO on behalf of its BOs <b>would be covered under services</b> , and hence, supply in terms of section 7(1) (a) of the CGST Act, 2017. However, the cost of said common input services availed on the behest of BOs/Units and allocated to the BOs/Units by the HO will not attract the levy of GST as the said costs have been incurred by the HO in the capacity of pure agent.
b.	Whether HO are <b>eligible to utilize the credit of Tax paid</b> for the common input services received on behalf of its BOs/Units?	Legal provisions says that for a registered person to be eligible to avail and utilize ITC, conditions prescribed under Section 16 of CGST Act, 2017 along with applicable rules needs to be complied with. One such condition is that the <b>good and services should be used or intended to be used in the course or furtherance of business.</b>

		<p>However, in the instant case, it was observed that the common input services received by the Appellant's HO are being used or consumed by the BO/Units in the course or furtherance of their business, and not by the HO, as the HO receives these common input services on behalf of the BO/Units.</p> <p>Hence, basis the above provisions, it was held that the <b>HO is not entitled to avail and utilize the credit of tax</b> paid on the common input services received by it on behalf of the BO/Units.</p>
<p>c.</p>	<p>Whether HO have to be <b>compulsorily registered as an ISD</b> in accordance with Section 24(viii) of the CGST Act, 2017 for distribution of input tax credit to BOs?</p>	<p>It was ruled that the provisions of Section 24(viii) of CGST Act, 2017 is applicable on the applicant and the applicant needs to compulsory gets registered as an ISD for transfer of the common ITC between BOs/ Units. Moreover, it was also stated in the ruling that Appellant's HO gets covered under the definition of ISD u/s 2(61) of CGST Act, 2017 as the sole and essential condition of receiving tax invoice from the third party for the Input Service has been squarely fulfilled.</p> <p>In this regard, the Appellant contended that as they do not issue the prescribed documents as envisaged in the</p>

definition of the ISD and Hence, they are not required to take the ISD registration They also contended that the HO intends to avail the ITC of the taxes paid on common input services received on behalf of the BOs/Units and utilize the same for setting off their liability as a normal supplier.

In this regard, AAAR concluded that that the Appellant are not entitled to avail or utilize the credit of taxes paid on the common input services received by them on behalf of their BOs/Units as the said common input services are used or consumed by the BOs/Units and not by the HO. Thus, the aforesaid contention, put forth by the Appellant wherein they have argued that the HO itself will be availing and utilizing the credit of tax paid by it on the said common input services for setting off its own GST liability does not hold water, and hence not tenable. Also, opined that the issuance of the prescribed documents by an ISD is the way or method for the distribution of the Input Tax Credit, which needs to be adhered to by an ISD for distributing the Input Tax Credit of the GST paid on the common input

		services, as envisaged under the provisions laid under the GST Act.
d.	<p>Whether the allocation of the cost of the employee's salary by the HO to the BOs/Units would attract levy of GST? If GST is leviable, what will be the <b>valuation of the services provided by the HO to its BOs/Units?</b></p> <p>Whether assessable value can be determined by arriving at nominal value?</p>	<p>On applicability of GST on recovery of salary of the employees of the HO from BOs/Units, it was held that employees of the HO are working at behest of the HO and not at behest of BOs/Units. HO is using human resources to facilitate the operational requirements of BOs/Units, thus providing facilitation services, consequently will be subjected to GST.</p> <p>On assessable value to be adopted for service provided by HO to BOs/Units, it was held that it can be determined as per the second proviso to clause (c) of Rule 28 of the CGST Rules, 2017.</p>

### DPNC Global comments:

- A. Though the rulings of AAAR are binding only to the parties, to the case but have persuasive value for other taxpayers.
- B. The debate on ISD vs Cross Charge is not yet settled. The issue needs to be discussed based on the facts and circumstances of each case and considered decision needs to be taken.
- C. Valuation for Cross Charge, if already implemented/being followed, needs to be revisited. Inclusions and exclusions while doing cross charge has to be worked out in a tax compliant manner within the four corners of the GST law.

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