

THE AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs & Service Tax)
NEW DELHI

4th Day of December, 2015

Ruling No. AAR/ST/16/2015 in

Application No. AAR/44/ST/13/2014

PRESENT

Justice V.S. Sirpurkar, Chairman
Shri S.S. Rana, Member (Revenue)
Shri R.S. Shukla, Member (Law)

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Name & address of the applicant	:	M/s. J.P. Morgan Services India Private Limited, Mumbai
Commissioner concerned	:	Commissioner of Service Tax, Mumbai-II, 115, New Central Excise Bldg, M.K. Road, Opp. Churchgate Station, Mumbai- 400020.
	:	Commissioner of Service Tax-VI, Mumbai-II, 115, New Central Excise Bldg, M.K. Road, Opp. Churchgate Station, Mumbai- 400020.
Present for the applicant	:	Mr. Balbir Singh, Advocate Mr. Tarun Jain, Advocate
Present for the Department	:	Shri Govind Krishna Dixit, Authorised Representative

RULING

The applicant M/s. J.P. Morgan Services India Private Limited is an information technology company. It has come out with a question to this Authority under the Service Tax Act. The question posed is as under:-

“The Advance Ruling is being sought with respect to the levy of service tax on the proposed car lease scheme (of providing vehicles to employees) under Section 66B of the Finance Act, 1994, i.e. whether the scheme proposed to be introduced by the Applicant would be regarded as a ‘service’ under the Finance Act, 1994 and thus, being subject to service tax.”

2. The applicant floated the scheme moreover as an employment retainment programme. Under the scheme, the applicant was to provide vehicles to its employees during the employment of the same. The applicant was to hire the cars from the car leasing companies and under the scheme those cars would be made available to such employees who are firstly continuing to be the employees of the applicant and secondly who accept the option to have the car for their personal as well as official use and in lieu of this, the company was to charge the said employees the same amount which the applicant would be paying to the car leasing company from whom they hire the car.

3. It is an admitted position that the service which is provided by the car leasing company to the applicant is being taxed under the regime of the service tax. There is no dispute over this. The question posed is as to whether the amount which the applicant charges to its employees for this use of the vehicles is subject to service tax.

4. In fact, there would be no necessity to consider this question if the amount is charged by the applicant to the employee is same which the applicant is paying to the car leasing company from whom it has hired the cars.

5. Shri Balbir Singh, the learned senior advocate appearing for the applicant firstly took us to the definition of the term ‘service’ which is defined in Section

65B(44). His contention is that he is covered by the exception created to the definition of 'service' by Section 65B(44) (b) which is as under:-

Service means "any activity carried out by a person, for another person for consideration, and includes a declared service, but shall not include a provision of service by an employee to the employer in the course of or in relation to his employment."

6. There can be no dispute that here the applicant is an employer and the applicant is providing some service to its employees by giving an option to all such employees to avail of a car. In that sense, it is making available a car for the use of the employees during the term of their employment for which it is charging only the car rent which the applicant is paying to the car leasing company from which it has hired the car. It is not charging a rupee more or a rupee less.

7. There is also an option given to the employee to ultimately purchase the car at the end of his employment and the employee would also be under the obligation to purchase the car at the rate which is a written down value. That by itself, can not be an exception. What is relevant is, as to whether a service is being provided by the applicant to its employees which service is "in the course of" or "in relation to" his employment. There can be no dispute that the service of "making available" a car to the employee is being rendered by the applicant. In this context, both the conditions are fulfilled which are conditions in clause (b) of Section 65B (44). Firstly, it is in the course of the employment because the agreement between the applicant and employee clearly suggests that this will be during the course of his employment only. Second condition is also satisfied that it is only because the employee is in service and in that sense the service becomes in relation to his employment. Since, both these conditions are fulfilled, we have no doubts in our mind that this will not amount to 'service'.

8. Shri Dikshit, the learned representative of the Revenue, however, says that in this case, the car is being 'made available' to the employee both for official and personal use. According to Shri Dikshit, this task of 'making available' a car for personal and official use as well would invite the service tax. We do not agree with this contention. In our opinion, whether the car given for official use, for personal use or use for both will not be making any difference. In view of the clear-cut language of Section 65B (44) (b), we answer the question accordingly. The matter is directed to be disposed of.

(S.S. Rana)
Member(R)

(V.S. Sirpurkar)
Chairman

(R.S. Shukla)
Member (L)