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2020 (41) G.S.T.L. 263 (A.A.R. - GST - Guj.)BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, GUJARAT
S/Shri Mohit Agrawal and Sanjay Saxena, Members

IN RE : GLOBAL VECTRA HELICORP LTD.

Advance Ruling No. GUJ/GAAR/R/21/2020, dated 2-7-2020 in Application No. Advance Ruling/SGST&CGST/2018/AR/46

Valuation (GST) - Reimbursed expenses - Rental services - Assessee holding non-scheduled Operators Permit providing rental services of aircraft including passenger aircrafts, freight aircrafts and the like with or without operator - Said services classifiable under SAC 996603 and covered under Serial No. 123 of Notification No. 11/2017-C.T. (Rate) - Where fuel not available, assessee procures fuel (ATF) on behalf of Customer and subsequently cost of fuel reimbursed by customer at actual (without charging any mark-up) - Payment made or to be made by customer to the assessee would not only include the payment for the supply of services but would also include cost of fuel - Amount towards fuel received as reimbursement by the applicant form part of 'consideration' - Any amount charged for anything done by supplier in respect of supply of goods or services or both at time of, or before delivery of goods or supply of services - Reimbursement of fuel would form part of value of services - Contention that recovery of fuel cost does not represent amount charged for anything done by assessee in respect of supply of rental services provided by it not sustainable - Payment for fuel received under separate invoice - However, assessee not indicating payment of fuel made by him on behalf of recipient of supply, separately on the invoice issued by him to recipient of service - ATF fuel procured by assessee for aircraft not in addition to services he supplies on his own account but a part of above service since fuel essential for assessee to render its services to customers - Fuel being procured to render assessee's service - No document produced to prove that ATF was reimbursed as per actual on production of original vouchers from ATF supplier - Sections 2(31) and 15 of Central Goods and Services Tax Act, 2017 - Fuel procured used for assessee's interest - None of conditions to hold assessee as "pure agent" in respect of supply of fuel satisfied - Amount recovered as reimbursement (at actual) by assessee from customer, for fuel procured on behalf of customer to be included in value of services provided by assessee - Rule 33 of Central Goods and Services Tax Rules, 2017. - Definition of 'consideration' clearly includes any payment made or to be made, in respect of supply of goods or services or both by the recipient or by any other person. It also includes the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. [paras 12, 12.1, 12.2, 12.3, 13, 14, 15, 16, 18]

Ruling in favour of department**CASE CITED**Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. — [2018 \(10\) G.S.T.L. 401](#) (S.C.) — **Distinguished** [Paras 5, 12.3]

REPRESENTED BY : Shri Anand Nainawati, for the Assessee.

[Order]. - Brief facts : The applicant-M/s. Global Vectra Helicorp Ltd. vide their application for Advance Ruling has submitted that they are having their registered office at A-54, Kailash Colony, New Delhi-110048 and GST registered office at Airports Authority of India, NH 8B, Porbandar Airport, Porbandar, Gujarat-360575. They have submitted that they hold a Non-scheduled Operators Permit (NSOP) (No. 8/1998) issued by the Directorate General of Civil Aviation (hereinafter referred to as the 'DGCA'). It employs a fleet of around 30 helicopters (aircrafts) for providing services classifiable under HSN 9966 03 i.e. Rental services of aircraft including passenger aircrafts, freight aircrafts, and the like with or without operator) in terms of

Annexure to Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (Charter Hire Services). Under the charter hire services entered into by the applicant with various customers, the applicant is responsible for operating and maintaining the aircrafts. The applicant employs experienced and qualified pilots and qualified engineering crew in accordance with aviation standards and ensures that the Aircrafts are available and fully operational during the term of the contract. Aviation Turbine Fuel (ATF) is required for flying the Aircrafts. While in terms of the contracts, the applicant agreed to provide rental services of aircraft (with or without operator) in respect of the ATF, it was agreed that provision of the same for the purpose of flying of the aircrafts would be the responsibility of the Customers. However, at locations where the customer is unable to provide the fuel, in order to ensure continuity of flying, the contract requires GVHL to procure the fuel on behalf of the Customer and subsequently the cost of the fuel is reimbursed by Customer at actual (without charging any mark-up). GVHL undertakes the activity of procurement of fuel as a 'pure agent'.

2. The applicant has mentioned the relevant clauses of Contract No. ONG/COL/HMM/CSR/AL/CH/HELICOPTER/CREWCHANGE/09/2014/P76BC4008-GR-1, dated 31-7-2015 with M/s. Oil and Natural Gas Corporation Ltd. (ONGC) as under :

- Clause 10 - PROVISIONS OF SERVICES AND FUEL
 - Clause 10.2 - By Charterer
 - Clause 10.2.1(iii)
 - "ATF shall be provided as free supply item by ONGC at Mumbai and Offshore. For other locations, ATF charges shall be reimbursed as per actuals on production of original vouchers from the ATF supplier of the concerned Airport.
 - In case due to any reason ONGC is unable to supply ATF at Mumbai, operator has to make arrangements for the ATF. ATF charges shall be reimbursed as per actual on production of original vouchers from the ATF supplier in Mumbai.
 - Clause 11.2 - Flying Hour Charge (FHC) (per helicopter)
 - Clause 11.2.1 states as follows :
 - "Charterer shall in respect of the chartered helicopter pay Contractor the corresponding hourly flying charges per hour and *pro rata* basis for the flying hours of each such helicopter(s) as per following rates :
 - The FHC is excluding of ATF price. The hourly charge is all inclusive airport charges, customs duty, insurance charges etc.
 - ATF shall be provided as free supply item by ONGC at Mumbai and Offshore. For other locations, ATF charges shall be reimbursed as per actual on production of original vouchers from the ATF supplier of the concerned airport."

The applicant has stated that from a reading of the clauses of the aforesaid contract, it is evident that ONGC is responsible for supply of fuel in case of Mumbai and offshore locations whereas for other locations, the fuel supply charges are required to be reimbursed by ONGC to GVHL on an agreed basis and the cost of the fuel is not included in the Flying Hour Charges.

3. The applicant has stated that the services provided by them qualify as "Rental services of aircraft including passenger aircrafts, freight aircrafts and the like with or without operator' under HSN Heading 9966 03. The applicant has explained the arrangement between the Applicant and the Customers as per the contract, as under :

- The applicant is responsible for providing aircrafts on charter hire basis, along with operator, for operations being carried out by them;
- The applicant undertakes to mobilize the helicopters at Customer's specified location (Airport/Heliport etc.) in India as may be designated by the Customer in fully operational condition for the charter hire service.
- Further, the applicant is also responsible for ensuring that the aircrafts are available and fully operational for the exclusive use of the customers and the persons authorized by the Customers and the daily flight schedule that is provided by the Customers;
- The contract also envisages that the applicant will provide experienced IFR licensed aircrews for the operation and qualified maintenance crews for flying the aircrafts as per the prescribed standards. All necessary clearances, permission to hold helicopter license to operate the helicopter, compliance with all laws, rules, regulations, orders, standards and schedules as specified by the Directorate General of Civil Aviation is to be complied with by the Applicant, who is the service provider;
- The Applicant was also obligated to provide to the Customers, the aircraft daily in airworthy condition regularly. For the services rendered, the applicant is eligible for remuneration on a fixed monthly charge basis plus flying hourly charges. The aircraft is to be operated upon by the crew provided by the applicant and such crew have complete control over the actual flying operations.

4. The applicant has submitted that GST is not applicable on fuel debit notes raised by the applicant on customers as the same are in the nature of reimbursements and not consideration towards any taxable supplies/services provided; that Section 15 of the GST legislation provides that the value of a supply of services shall be the transaction value i.e. the price actually paid or payable for the said supply of services or where the supplier and the recipient of the supply are not related and

the price is the sole consideration for the supply; that in the instant case, the applicant agreed to provide charter hire services and for the said services, the applicant is entitled to receive consideration from ONGC as follows : (i) fixed monthly charges are generally per month and (ii) flying hourly charges are per hour; that as per Charter Hire Agreement, the only consideration paid or payable to the applicant for the services rendered is in the form of fixed monthly charges and flying hourly charges; that in terms of Section 2(31) of the GST legislation, the term 'consideration' in relation to supply of services to any person includes any payment to be made, in money or otherwise in respect of supply of services; that the applicant is duly discharging its GST liability on fixed monthly charges and flying hourly charges under the HSN Heading 9966 03 "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator" hence the applicant is duly discharging GST on the value of supply for the taxable services provided to the Customers, in terms of Section 15 of the GST Legislation; that in view of the above, the value of the debit notes raised by the applicant for reimbursement of the fuel supplied on actual basis does not qualify as consideration for the services provided by the applicant since as per the agreement, it is the responsibility of the customer to provide fuel and only at locations where the customer is unable to provide fuel, the same is procured by the applicant and the cost is reimbursed by the Customers on an actual basis, hence it is not a consideration for the services provided by the applicant; that the value of fuel reimbursed by the customers does not result into any benefit to the applicant as the fuel is consumed for flying the helicopters supplied to the customers; that the arrangement of providing fuel by the applicant was merely for administrative convenience and debit notes raised by the applicant for recovery of fuel do not have any direct nexus with the Charter hire services of Aircrafts provided by the applicant to the customers hence GST should not be applicable on such debit notes.

5. The applicant has further submitted that the accounting policies followed by the applicant for recording the transactions relating to fuel reimbursements from customers have been audited by the statutory auditors of the applicant; that in the audited financials of the applicant, such reimbursements have not been treated as service income and so the same is not recognized/treated as service income in the P & L account of the applicant; that similarly fuel purchases by applicant are not debited to the P&L account as expenses and are treated as receivables from Customers and on recovery of such receivables, the amounts recovered are adjusted against the receivables; that the books of accounts have been prepared and audited in terms of the Accounting Standards as required under Companies Act, 2013; that the above submissions clearly establish that fuel cost reimbursed by Customers will not qualify as consideration for services provided by the applicant in terms of the Charter Hire Agreement, hence GST cannot be levied on reimbursements as fuel debit notes raised on customers cannot be consideration towards taxable services; that Section 15 of GST legislation uses the phrase "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" and that fuel debit notes is not a consideration for the services provided by the applicant; that Section 67 of the Finance Act, 1994 provided that valuation of taxable services for charging service tax, is the gross amount charged for providing such taxable services and that the same principle can be applied for determining the value of taxable supply under the GST regime. The applicant has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Union of India & Anr. v. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd.* (Civil Appeal No. 2013 of 2014) [\[2018 \(10\) G.S.T.L. 401 \(S.C.\)\]](#) wherein the Supreme Court held as under :

"In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services, as a fortiori, any other amount which is calculated not for providing such taxable service cannot be a part of the valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e. prior to May 1, 2006) or after its amendment, with effect from May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service."

6. The applicant has submitted that Section 15(2) provides for the list of items to be included for determining the value of 'supply' in terms of the GST legislation and clause (c) reads as under :

"incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;"

The applicant has stated that as per the provision the following are includible in the value of supply :

- (i) Incidental expenses charged by the supplier to the recipient of a supply; and
- (ii) Any amount charged for anything done by the supplier in respect of the supply at the time of, or before supply of services.

The applicant has stated that they recover cost of fuel from their customers and the same is not covered under sub-clause (i) as recovery of fuel could not qualify as incidental expenses to the rental services provided by the applicant and the same also does not fall under sub-clause (ii) also as the recovery of fuel cost does not represent an amount charged for anything done by the applicant in respect of supply of rental services provided by the applicant. The applicant has submitted that the term 'incidental expenses' has not been defined under GST legislation and has therefore submitted the dictionary meanings as under :

- As per Black's Law Dictionary, the term incidental is defined as 'subordinate to something of greater importance;

having a minor role" and the term 'expense' has been defined as 'an expenditure of money, time, labour, or resources to accomplish a result; esp. a business expenditure, chargeable against revenue for a specific period.

- Oxford dictionary defines the term 'incidental' as 'happening as a minor accompaniment to something else' or 'happening as a result of (an activity)'. The term 'expense' is defined as "the cost incurred in or required for something";
- *Freedictionary.com* defines the term 'incidental expense' as 'an expense not budgeted or not specified'.
- *Dictionary.com* defines the term 'incidental' as 'happening or likely to happen in an unplanned/subordinate conjunction with something else, incurred casually and in addition to the regular or main amount;

The applicant has stated that going by the rule of literal construction and in absence of specific definition in the cardinal rule of construction in this regard, any expense which is not budgeted or likely to happen in an unplanned manner and which is incidental to the main or primary supply is an 'incidental expense'; that in the instant case, from the reading of the relevant clauses of the contract, it is evident that the provision of fuel cannot be considered as incidental to the main supply of Charter Hire services as the supply of fuel is not the responsibility of the applicant and is the responsibility of customers; that since the primary responsibility for provision of fuel for flying of the aircrafts is of the applicant's customers', provision of fuel by the applicant on behalf of the customer for ensuring uninterrupted provision of Charter Hire services cannot be termed as an expense incidental to the main supply and thus cannot be included in the value of services supplied by the applicant for computation of GST.

7. The applicant has further stated that the fuel costs recovered from the Customer is the actual cost of fuel and the applicant is acting as a pure agent of the customer and therefore reimbursement of fuel debit notes is not to be included in the value of taxable services provided by the applicant. He has also stated that a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure (on some other supply) on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply and while the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of the ancillary supply is that of a pure agent. He has further stated that in terms of Rule 33 of the CGST Rules, 2017, the expenditure or costs incurred by a supplier as a 'pure agent' of the recipient of the supply are excluded from the value of taxable supply for computation of GST and that Rule 33 specifies the conditions that need to be satisfied by a supplier to qualify as a pure agent which are as under :

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

As regards condition (a) above, the applicant has stated that as per the contract between the applicant and the customer, it has been agreed that the provision of fuel for flying the aircrafts is the responsibility of the customers and in case the fuel cannot be arranged by the customer, the applicant would incur the cost of fuel and get it reimbursed from the customer at actual. Thus the applicant is undertaking to incur certain costs, for which the recipient is liable and therefore this condition is satisfied. Regarding condition (b) above, the applicant states that he does not hold or intends to hold any title to the fuel so procured for flying of the aircrafts and by incurring the cost of fuel on behalf of the customers and reimbursement of the same by the customers to the applicant, it establishes that the applicant does not hold title to the fuel so procured on behalf of Customers and therefore this condition is also satisfied. Regarding condition (c) above, the applicant has stated that as per contract, the provision of fuel for flying the aircrafts is the responsibility of the customers and in case where the fuel was not provided by the customer in certain agreed specified areas, the applicant arranged fuel on behalf of the customer just to ensure that the aircraft remained operational during the contract. The applicant has also stated that it was agreed between the customer and the applicant that the consideration does not include fuel and as the scope does not include provision of fuel the same was not used by the applicant for his own interest. Therefore this condition is also satisfied. As regards condition (d) above, the applicant has stated that only the actual amount incurred for fuel is recovered from the Customers and no mark-up is charged and thus this condition is also satisfied.

8. The applicant has further stated that in terms of Rule 33 of the CGST Rules, 2017, the following conditions also need to be satisfied to qualify as a pure agent :

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

As regards condition (i) above, the applicant has stated that applicant is acting as pure agent in incurring the fuel cost on behalf of customers and that as per the contract the customers authorized the applicant to incur cost of fuel for aircraft on their behalf in the areas where the customers could not provide fuel and hence this condition is satisfied. As regards condition (ii) above, the applicant has stated that the cost of fuel incurred on behalf of customers was not included in the taxable value indicated in the invoices issued by the applicant on customers, but were charged through separate debit notes raised on the customers by the applicant and hence this condition is satisfied. As regards condition (iii) above, the applicant has stated that this condition is also satisfied since the applicant has provided on their own account, rental services of aircrafts as described in the contract with customers in the instant case.

The applicant has put forward the following question on which advance ruling is required :

“Whether in terms of the valuation provisions under GST legislation, amount recovered as reimbursement (at actual) by the applicant from the customer, for the fuel procured on behalf of the Customer is required to be included in the value of services provided by the Applicant?”

Discussion & findings

9. We have considered the issue involved on which Advance Ruling is sought by the applicant, relevant facts, applicant's interpretation of law as well as the arguments/discussions made by their representative Shri Anand Nainawati at the time of personal hearing.

10. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

11. On going through the submission given by the applicant, we find that they are providing services “Rental services of aircraft including passenger aircrafts, freight aircrafts and the like with or without operator” classifiable under Heading 9966 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 which appears at Sr. No. 10(ii) of the said Notification on which applicable GST is 18% (9% SGST + 9% CGST) and reads as under :

Sl. No.	Chapter, Section or Heading	Description of service	Rate (per cent)	Condition
10.	Heading 9966 (Rental services of transport vehicles)	(i) Renting of motorcab where the cost of fuel is included in the consideration charged from the service recipient.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation No. (iv)]
		(ii) Rental services of transport vehicles with or without operators, other than (i) above.	9	---

The said service is specifically classifiable under Heading No. 9966 03 of Annexure to the Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, appears at Sr. No. 123 of the said Annexure and reads as under :

Sl. No.	Chapter, Section or Heading	Service Code (Tariff)	Service Description
119	Heading 9966		Rental services of transport vehicles with or without operators
120	Group 99660		Rental services of transport vehicles with or without operators.
121		996601	Rental services of road vehicles including buses, coaches, cars, trucks and other motor vehicles, with or without operator.
122		996602	Rental services of water vessels including passenger vessels, freight vessels and the like with or without operator.
123		996603	Rental services of aircraft including passenger aircrafts, freight aircrafts and the like with or without operator.

The applicant is holding a Non-scheduled Operators Permit (NSOP) (No. 8/1998) issued by the Directorate General of Civil Aviation (hereinafter referred to as the ‘DGCA’) and employs a fleet of around 30 helicopters (aircrafts) for the purpose. Under the charter hire services entered into by the applicant with various customers, the applicant is responsible for operating and maintaining the aircrafts. The applicant employs experienced and qualified pilots and qualified engineering crew in accordance with aviation standards and ensures that the Aircrafts are available and fully operational during the term of the contract. Aviation Turbine Fuel (ATF) is required for flying the Aircrafts. While in terms of the contracts, the applicant agreed to provide rental services of aircraft (with or without operator) in respect of the ATF, it was agreed that provision of the same for the purpose of flying of the aircrafts would be the responsibility of the Customers. However, at locations where the customer is unable to provide the fuel, in order to ensure continuity of flying, the contract requires GVHL to procure the fuel on behalf of the Customer and subsequently the cost of the fuel is reimbursed by Customer at actual (without charging any mark-up). GVHL undertakes the activity of procurement of fuel as a ‘pure agent’.

The applicant has put forward the following question on which Advance ruling is required :

“Whether in terms of the valuation provisions under GST legislation, amount recovered as reimbursement (at actual) by the Applicant from the Customer, for the fuel procured on behalf of the Customer is required to be included in the value of services provided by the Applicant?”

12. In this regard, we would like to refer to Section 2(31) of the CGST Act, 2017, which defines ‘consideration’ as under :

(31) “consideration” in relation to the supply of goods or services or both includes -

“(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall

not include any subsidy given by the Central Government or a State Government;

- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government :

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"

The above definition of 'consideration' clearly includes any payment made or to be made, in respect of supply of goods or services or both by the recipient or by any other person. It also includes the monetary value of any Act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. In the instant case, the payment made or to be made by the recipient includes payment towards the services rendered by the applicant as well as the payment towards fuel, which has been filled by the applicant in the aircrafts. This means that payment made or to be made by the recipient to the applicant would not only include the payment for the supply of services i.e. "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator" but would also include the amount for the fuel filled in the aircraft by the applicant. Therefore, the amount of ATF fuel, which is received as reimbursement by the applicant will undoubtedly form a part of the 'consideration' i.e. the value of the services provided by the applicant and GST is liable on the same.

12.1 Further, the value of taxable supplies is provided under Section 15 of CGST Act, 2017, which is reproduced here as under :

"SECTION 15. Value of taxable supply. - (1) 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.

(2) The value of supply shall include -

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation. - For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given -

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if -
- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed."

12.2 Therefore, in terms of Section 15(1) of the CGST Act, 2017, *'the value of 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.* In the instant case, where the applicant and the customer are unrelated parties, the price actually paid or payable for the supply of services includes the value of services i.e. "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator" as well as the amount for the fuel filled in the aircraft by the applicant, which would be the sole consideration for the supply as per the said section.

12.3 Further, the judgment of the Hon'ble Supreme Court of India in the case of *Union of India & Anr. v. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd.* (Civil Appeal No. 2013 of 2014) [[2018 \(10\) G.S.T.L. 401](#) (S.C.)], which has been relied upon by the applicant pertains to the pre-GST era. Further, the said case law pertains to the period prior to 14th May, 2015, when the legislative amendments were not brought out in the Finance Act, 1994. But, this is not the case in GST law, since these provisions are already part of the CGST Act itself. 'Consideration' has been clearly defined in Section 2(31) of the CGST Act, 2017. Section 15 of the CGST Act, 2017 elaborates in great detail, the things that are required to be included in the value of supply. Sub-section (2) of Section 15 itself starts with the words "The value of supply shall include - "and goes on to elaborate the things required to be included in the value of supply. Sub-section (3) of Section 15 specifies the things which are not to be included in the value of supply. Thus, all the aspects of valuation of supply have been covered in the CGST Act itself.

13. At para-6 above, the applicant has referred to the provisions of Section 15(2) of the CGST Act, 2017 and stated that as per the provisions, the following are includible in the value of supply : (i) Incidental expenses charged by the supplier to the recipient of a supply; and (ii) Any amount charged for anything done by the supplier in respect of the supply at the time of, or before supply of services. They stated that they recover cost of fuel from their customers and the same is not covered under sub-clause (i) as recovery of fuel could not qualify as incidental expenses to the rental services provided by the applicant and the same also does not fall under sub-clause (ii) also as the recovery of fuel cost does not represent an amount charged for anything done by the applicant in respect of supply of rental services provided by the applicant; that the provision of fuel cannot be considered as incidental to the main supply of Charter Hire services as the supply of fuel is not the responsibility of the applicant and is the responsibility of customers; that since the primary responsibility for provision of fuel for flying of the aircrafts is of the applicant's customers', provision of fuel by the applicant on behalf of the customer for ensuring uninterrupted provision of Charter Hire services cannot be termed as an expense incidental to the main supply and thus cannot be included in the value of services supplied by the applicant for computation of GST. In this context, a reference is required to be made to the relevant portion of Section 15(2) of the CGST Act, 2017, which reads as under :

Section 15(2) : the value of supply shall include -

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

As per Section 15(2)(c) above, any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services would also form part of the value. In the instant case, the applicant is filling ATF fuel in the aircraft before the supply of services to the customer i.e. "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator" and the amount of the ATF fuel is being charged from the customer, which the applicant is receiving in the form of consideration, which has been received by them as reimbursement. This act of the applicant would be considered as 'any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services' and would, therefore, form part of the value. Therefore, the contention of the assessee that the recovery of fuel cost does not represent an amount charged for anything done by the applicant in respect of supply of rental services provided by them does not hold water.

14. As per paras-7 and 8 above, the applicant has submitted that the fuel costs recovered from the Customer is the actual cost of fuel and the applicant is acting as a pure agent of the customer and therefore reimbursement of fuel debit notes is not to be included in the value of taxable services provided by the applicant. He has also stated that a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure (on some other supply) on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply and while the relationship between them(provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of the ancillary supply is that of a pure agent. He has further stated that he has satisfied all the conditions that need to be satisfied by a supplier to qualify as a pure agent in terms of Rule 33 of the CGST Rules, 2017. In this regard, we are required to refer to Rule 33 of the CGST Rules, 2017 (which reads as under) which reads as under :

Rule 33. Value of supply of services in case of pure agent. - Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

15. We are, therefore, required to examine as to whether the applicant satisfies all the conditions mentioned hereinabove and satisfies the conditions of a pure agent, which are enlisted hereunder :

- (i) *the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*

Clause 10.2.1.(iii) of Schedule-A of the contract of the applicant with ONGC (customer) dated 31-7-2015 reads as

under :

"ATF shall be provided as free supply item by ONGC at Mumbai and Offshore. For other locations, ATF charges shall be reimbursed as per actual on production or original vouchers from the ATF supplier of the concerned Airport."

"In case due to any reason, ONGC is unable to supply of ATF at Mumbai, operator has to make arrangement for the ATF. ATF charges shall be reimbursed as per actual on production of original vouchers from the ATF supplier at Mumbai."

As per the above clause of the contract, the recipient has authorised the supplier to make payment to the third party at certain locations. It has also been mentioned therein that ATF charges shall be reimbursed as per actual on production of original vouchers from the ATF supplier at Mumbai. However, for the applicant to qualify as a 'pure agent' the applicant is required to provide documentary evidence to prove that the reimbursement received from their customer is as per actual and without mark up. However, they have not produced the relevant documents to prove this point. Therefore, this condition is not satisfied.

- (ii) *the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service;*

In this regard, the applicant themselves have submitted that the cost of the fuel incurred on behalf of customers was not included in the taxable value indicated in the invoices issued by the applicant on customers for charter hire services, however, the same were charged through separate debit notes raised on Customers by the applicant. As per the condition, the applicant was required to indicate the payment of fuel made by him separately in the invoice issued by him to the recipient of service. However, the applicant has not indicated the payment of fuel made by him on behalf of the recipient of supply, separately on the invoice issued by him to the recipient of service. Hence this condition is not satisfied.

- (iii) *the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account :*

In the instant case, the supplies procured by the applicant from the third party is that of ATF fuel, which he procures and fills in the aircrafts which are used to provide "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator". Therefore, the ATF fuel procured by the applicant for the aircraft is not in addition to the services he supplies on his own account but a part of the above service since only as the ATF fuel filled in the fuel tank of the aircraft would enable the aircraft to fly and thus enable the applicant to provide the aforementioned service to their customer. Hence, this condition is also not satisfied.

16. Further, as per Rule 33 of the CGST Rules, 2017, the following conditions are also needed to be satisfied to qualify as a 'pure agent' :

- (a) *enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*

Clause 10.2.1.(iii) of Schedule-A of the contract of the applicant with ONGC (customer) dated 31-7-2015 reads as under :

"ATF shall be provided as free supply item by ONGC at Mumbai and Offshore. For other locations, ATF charges shall be reimbursed as per actual on production or original vouchers from the ATF supplier of the concerned Airport."

"In case due to any reason, ONGC is unable to supply of ATF at Mumbai, operator has to make arrangement for the ATF. ATF charges shall be reimbursed as per actual on production of original vouchers from the ATF supplier at Mumbai."

Ongoing through the above conditions of the contract, it can be seen that the applicant has been authorised by the recipient i.e. ONGC to make arrangement for the ATF for locations other than that of Mumbai and Offshore and also in cases where ONGC is unable to supply ATF at Mumbai. It has also been mentioned therein that ATF shall be reimbursed as per actual on production of original vouchers from the ATF supplier at Mumbai. However, for the applicant to qualify as a 'pure agent' the applicant is required to provide documentary evidence to prove that the reimbursement received from their customer is as per actual and without mark up. However, they have not produced the relevant documents to prove this point. Therefore, this condition is not satisfied.

- (b) *neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*

In the instant case, only the ATF fuel procured by the applicant and filled in the fuel tank of the aircraft would enable the aircraft to fly and thus enable the applicant to provide the "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator" to their customer. Thus, the fuel so procured by the applicant is with the intention to enable him to supply the aforementioned service. Therefore, it cannot be said that the applicant neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply. Thus, the said condition is not satisfied.

- (c) *does not use for his own interest such goods or services so procured;*

In the instant case, the fuel is procured by the applicant for the aircraft through which he is providing "Rental services of aircraft including passenger aircrafts, freight aircraft and the like with or without operator". Only the ATF fuel filled in the fuel tank of the aircraft would enable the aircraft to fly and thus enable the applicant to provide the aforementioned service to their customers. Therefore, the fuel so procured by the applicant is used for his own interest i.e. to enable the applicant to provide the aforementioned service to the customer. Thus, the said condition is not satisfied.

- (d) *receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply, he provides on his own account. :*

Ongoing through, the details/documents submitted by the applicant, it is seen that no evidence/documentary proof has been submitted by the applicant to prove that he has received only the actual amount incurred to procure the ATF fuel for the aircrafts other than mentioning in their submission that the reimbursements have not been treated as service income in their Profit and Loss Account, that they are treated as receivables from Customers and that on recovery, of such receivables, the amount recovered are adjusted against such receivables. However, in absence of relevant documents in this regard, we would be left with no option but to conclude that this condition is also not satisfied.

17. In view of the discussions as detailed above, we rule as under -

RULING

18. In terms of the valuation provisions under GST legislation, amount recovered as reimbursement (at actual) by the applicant M/s. Global Vectra Helicorp Ltd. from the customer, for the fuel procured on behalf of the Customer is required to be included in the value of services provided by the Applicant.