

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)**

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-14-E/2019-20

DATE:14.02.2020

Sl. No	Name and address of the appellant	M/s Ascendas Services (India) Pvt. Ltd., 3rd Floor, Discoverer Building, International Tech Park Bangalore, Whitefield Road, Bengaluru 560066
1	GSTIN or User ID	29AAACT7290C1Z9
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 114/2019 Dated: 30th Sept 2019
3	Date of filing appeal	16-11-2019
4	Represented by	Shri. Prashanth Bhat & Shri Nitesh Kumar of M/s Deloitte Touche Tohmatsu India LLP
5	Jurisdictional Authority- Centre	Principal Commissioner of Central Tax, Bangalore East Commissionerate.
6	Jurisdictional Authority- State	LGSTO 035A, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No RBIS19112900102335 dated 13.11.2019 for Rs 10,000/- and CIN No RBIS19112900110578 dated 14-11-2019 for Rs 10,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Ascendas Services (India) Pvt. Ltd., 3rd Floor, Discoverer Building, International Tech Park Bangalore, Whitefield Road, Bengaluru 560066 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 114/2019 dated: 30th Sept 2019.

Brief Facts of the case:

3. The Appellant is engaged in the business of operation and maintenance of International Tech Park, Bangalore which includes operation and maintenance of electrical systems at common areas, building and civil repairs, maintenance of lifts etc. In addition, the appellant also arranges for the transport of its staff and employees of the corporate clients in the Tech Park who are the tenants of the business park (herein after referred to as 'commuters').

4. For the purpose of arranging the transport facility, the Appellant has entered into a contract with Bangalore Metropolitan Transport Corporation (hereinafter referred to as 'BMTC') whereby BMTC allots 1 bus to the Appellant for every 50 passes purchased. The Appellant receives the following types of bus passes from BMTC for distribution:

- Non AC regular BMTC bus pass; and
- Combo bus pass which can be used for Non-AC and AC buses

BMTC does not charge GST for the non-AC bus passes since the same is exempt from GST vide Entry No.15 of Notification No. 12/2017-CT(R) dated June 28,2017. However, for Combo bus pass (i.e. which can be used for non-AC and AC buses), BMTC charges GST at 5% as per Entry No. 8(ii) of Notification No. 8/2017- IT (R) dated June 28, 2017.

5. The Appellant charges a separate fee of Rs 300 per commuter as 'facilitation fee' for arranging the transport facility for the said commuters. In this connection the Appellant sought an advance ruling in respect of the following question:

- a) *Whether the value of bus passes distributed by the applicant to the commuters is to be included in the value of facilitation charges as per section 15(2) of the CGST Act, 2017 and KGST Act, 2017?*

b) *Whether the supply of service in the hands of the applicant could be classified as merely a supply of facilitation services between BMTC and the commuters?*

6. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 114/2019 dated 30-09-2019 held as follows:

1. *The value of the bus passes distributed by the applicant to the commuters and the facilitation charges is to be included in the value of services provided by the applicant.*
2. *Regarding the second question of “whether the supply of service in the hands of the applicant could be classified merely a supply of facilitation service between BMTC and the commuters”, the answer is in the “negative.*

7. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

7.1 The Appellant submits that they are merely providing the service of facilitation of transportation service by obtaining bus passes from BMTC and providing the same to the commuters; that the employees of the tenants of the Appellant are the service recipients who receive the following two services

- Transportation service provided by BMTC, and
- Facilitation service provided by the Appellant by making available the bus pass to the commuters at their respective workplaces.

They submitted that the benefit of the service is accrued by the commuters irrespective of the fact that payment is made by the Appellant. In this regard, they placed reliance on the case of Verizon Communication India Pvt Ltd vs Asst Commr ST Delhi III reported in 2018 (8) GSTL 32 (Del) which held that recipient of service is one who benefits from the service.

7.2. They submitted that it would be almost impossible for BMTC to get into a contract with each of the individual passengers and therefore, the contract is between the Appellant and BMTC; that the Appellant is merely facilitating transportation service between BMTC and the commuters; that owing to the practical difficulty of

raising invoices in the name of each individual passenger i.e in the name of each employee of the tenant who are the ultimate beneficiary of the transportation service, BMTC raises a consolidated invoice in the name of the Appellant; that the Appellant issues a separate invoice for such facilitation and charges a facilitation fee of Rs 300 and applicable GST at 18% as "Support services in transport". They submitted that apart from the facilitation charges, they receive the actual amount incurred to obtain such bus passes for distribution and therefore the Appellant cannot be held to be the service recipient of transportation service since the said services are primarily rendered to the commuters who are the ultimate beneficiary of transportation service provided by BMTC.

7.3. They further submitted that they act as a pass-through by mediating the transportation service provided by BMTC to the occupants of ITPB; that they are an intermediary with respect to the supply of bus passes in as much as they arrange the service of transportation by providing the bus passes to the occupants and do not provide the transportation service on its own account; that the Appellant is incapable of providing transportation services owing to a lack of a government permit to do so; that they are providing a service which is merely in the nature of facilitation to enable the commuters to avail the transportation facility provided by BMTC; that as per the definitions of "Contract carriage" and "Stage carriage" as given in the Motor Vehicles Act, permits are to be obtained for operating stage carriage and contract carriage; that the Appellant has not applied for or obtained such permits and it is not providing any service of transportation of passengers through contract or stage carriage.

7.4. They relied on the definition of intermediary services under the erstwhile indirect regime as well and drew reference to the Education Guide issued by Central Board of Excise & Customs with regard to Taxation of services, which provides the factors for determining a person as an intermediary. The relevant extract is as follows:

"In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: *An intermediary cannot alter the nature or value of the service, the*

supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: *The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging, It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".*

Identity and title: *The service provided by the intermediary on behalf of the principal is clearly identifiable."*

7.5. On the basis of the above, they stated that they satisfy the factors as stated below:

Nature and Value: The Appellant in the instant case, does not alter the nature of service provided by BMTC. The Applicant merely recovers the cost of the bus pass from the commuters and the same is paid to BMTC. Essentially, BMTC provides transportation service by issuing bus passes, a service which is consumed by the commuters utilizing the bus passes.

Separation of value: Being an intermediary the Applicant is receiving consideration in the form facilitation fee for arranging the transportation service by making the bus passes available to the commuters. The value of this service is clearly identifiable and recovered separately from the service recipients. This is also evidenced from the invoice.

Identity and Title: BMTC is responsible for providing the buses and carrying out the transportation service. The responsibility of the Applicant is towards facilitation of the same. The same can be substantiated by the agreement between BMTC and the Applicant.

7.6. They relied on the decision of the Maharashtra AAR in M/s Jotun India Pvt Ltd reported in 2019 (10) TMI 482 which held on a similar arrangement between the applicant, its employees and an insurance company that the applicant is not rendering any service of health insurance to the employees' parent and hence there is no supply of services in the instant case of transaction between employer and employee. They stated that the principles

upheld in the above case will squarely apply to their case also and the recovery of bus pass amount cannot be treated as an activity in the course of business or for the furtherance of business

7.7. They submitted that the arrangement as per the Agreement between the Appellant and BMTC provides for arranging transportation service; that as per the agreement, the Appellant has merely agreed to facilitate the transportation service and assist the commuters to obtain the passes. Relevant extract of the agreement is as follows:

“the second party is desirous of arranging for transport for the staff employed with it and by the various corporate clients of the International Tech Park Bangalore (ITPB) (staff of the tenants of the Park) from different parts of Bangalore city as mentioned in the Schedules, to and from ITPB, located at Whitefield Road, Bangalore 560066. The First party has agreed to arrange the transport facility to the staff of tenants of the Park (the said purpose) subject to the terms and conditions”

7.8. The Appellant submitted that bus passes are issued by BMTC only on the request, of the Appellant (depending on the demands raised by the commuters). Further, the unused passes are returned by the Appellant to BMTC, thereafter, BMTC issues invoices only for the actual passes utilized. This fact is also substantiated by clause 12 of the agreement which is reproduced as under:

“12. Monthly passes shall be provided as per request of the Second Party. The Second Party shall ensure that all unused passes for the month are returned to the First Party on or before the 10th of each month. The First Party shall prepare bills after taking into account all the returned passes and only for the actual number of passes utilized by the Second Party.”

In terms of the aforesaid clause, the Appellant has therefore, agreed to facilitate or arrange transport facility and is merely delivering the bus passes to the commuters to avail the same.

7.9. The appellant submitted the following illustration of the process involved in the transaction done by them:

Step	Description
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Step 1	The concerned operations team of the Appellant raises request for BMTC bus pass for the month of July 2019 before 30 th of June either based on mail request or the number of passes procured the previous month.
Step 2	BMTC delivers the bus passes for the month of July 2019 on or before 30 th June 2019.
Step 3	The Appellant's operations team issues passes and raises invoice on customers based on the request for number of passes received for July 2019.
Step 4	The Appellant's operations team returns the un-sold passes to BMTC on or before 10 th July 2019.
Step 5	BMTC raises invoice on the Appellant on or before 12 th July 2019.
Step 6	Appellant pays BMTC on or before 15 th July 2019 ₹ for the bus passes of July 2019.

7.10 In view of the above the Appellant submitted the arrangement is merely facilitating or arranging transport facility and is delivering the bus passes to the commuters; that in the subject transaction, the Appellant has stepped into the shoes of facilitator who has helped bring about an outcome by providing unobtrusive assistance to both commuters and BMTC. They further submitted that they do not possess any transport service permits but merely facilitates transport services between BMTC and the commuters; that the bus passes are provided to the commuters at cost i.e. at the price at which these are received by the Appellant from BMTC; that in this arrangement, they receive and incur expenditure on behalf of the recipient and recover the exact amount from the commuters. Hence the Appellants have restricted themselves to be an agent or facilitator of service and the facilitation charges for making the bus passes available to the commuters are collected from the commuters.

7.11. Regarding the value to be adopted for the service of facilitating transportation, the Appellant submitted that as per section 15 of the CGST Act, 2017 value of supply is defined as:

“(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.”

In view of the above, the value of the service of arranging transportation is the value of facilitation fee charged by the Appellant. The supply of bus pass to avail transportation service is a supply in the hands of BMTC, on which BMTC is levying GST. The Appellant further submits that for providing the service of facilitating transportation for the commuters, the applicant is charging a facilitation fee on which applicable GST is being discharged at the rate of 18% and that the same should be the value as per section 15 of the CGST Act, 2017.

7.12. The Appellant further submitted that sub-section (2) of section 15 of the CGST Act, provides for the amounts and other ancillary costs to be included in the value of supply. The extract of the same is provided as follows:

“(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 Service 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.”

They submitted that the value of bus pass is not covered under any clause of section 15(2) as stated above; that the supply of bus pass being a supply for BMTC, will not be covered under clause (b) of the said section; therefore the value of bus passes distributed by the Appellant to the commuters is not to be included in the value of facilitation charges in terms of section 15(2) of the CGST Act and KGST Act.

PERSONAL HEARING:

8. The Appellants were called for a personal hearing on 10th January 2020 and were represented by Shri. Prashanth Bhat & Shri Nitesh Kumar of M/s Deloitte Touche Tohmatsu India LLP who reiterated the submissions made in the grounds of appeal. In addition, the authorized representatives raised the argument that the bus pass given by the Appellant to the commuters is an “Actionable claim”. In this regard, the Appellant sought time to make additional submissions on this point. Accordingly, vide letter dated 24th January 2020, the Appellant submitted that in the light of the definition of the term “actionable claims” in Section 2(1) of the CGST Act and ruling of the Supreme Court in H. Anraj vs Govt of Tamil Nadu (AIR 1986 SC 63), it can be construed that bus passes are an acknowledgement of receipt of money in advance for rendering services in the future; that as the money has been received in advance for the same, it can be contended that it constitutes a debt for the service provider. They relied on the decision in the case of Bharti Airtel Ltd vs ACST (2010 (34) VST 202) wherein it was held that even recharge vouchers could constitute an actionable claim as it is an acknowledgment of money received in advance for rendering services. Drawing a parallel to the above ruling, they submitted that the bus passes are akin to the recharge coupon vouchers whereby the bus passes provide the commuters with the right to enjoy transport facilities in buses; that given that bus passes satisfy the conditions for qualifying to be an actionable claim, the same should not be brought to the ambit of taxation. They further submitted that even if it is contended that the bus pass is a contract of

carriage, the same would still qualify to be an actionable claim as was held in Shah MuljiDeoji, A firm vs Union of India (AIR 1957 Nag 31). In the light of the above, they prayed that the value of the bus passes distributed by the Appellant to commuters should not be included to the value of facilitation charges as per Section 15(2) of the CGST Act.

DISCUSSIONS AND FINDINGS

9. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing. There are two issues to be decided by us viz:

- Whether the supply of service by the Appellant to the commuters is a facilitation of transport service by BMTC to the commuters?
- Whether the value of the bus passes distributed by the Appellant to the commuters is to be included in the value of the facilitation charges?

10. As regards the first issue, we have gone through the agreement dated 30th March 2018 entered into between the Appellant and BMTC. The Appellant is a private limited company engaged in operating and maintaining the International Tech Park at Bangalore. It also arranges for the transportation of its employees as well as the employees working with the various corporate clients in the Tech Park. For this purpose, the Appellant has entered into an agreement with BMTC for supply of buses to transport ~~the~~ to its employees and the employees of the tenants of the International Tech Park. As per the agreement, BMTC will provide the required number of chartered buses at the rate of 1 bus for every 50 bus passes taken by the Appellant. There are two types of bus passes provided by BMTC to the Appellant viz. Non-AC bus pass and Combo bus pass which can be used for both AC bus as well as non-AC bus. The rate payable by the Appellant to BMTC depends on the type of bus provided by BMTC i.e AC or non-AC bus. The agreed upon rate payable by the Appellant to BMTC shall be deemed to include salaries, wages, bonus, overtime pay, any other remuneration and compensation tax and levies payable to the admin, depot and bus crews in accordance with the existing laws and regulations. BMTC only provides the buses along with the crew. The Appellant decides on the schedule for each bus route and the same is communicated to the BMTC depot so that the same is maintained. The Appellant has the

prerogative of introducing a new route, deleting an existing route and also changing the schedules of an existing route. BMTC agrees to provide the additional buses whenever the Appellant introduces new routes subject to the agreed upon rate of 1 bus for every 50 bus passes. All the commuters travelling in the buses engaged by the Appellant shall possess identification cards and the monthly passes/causal passes issued by the Appellant.

11. On reading the terms of the agreement between the Appellant and BMTC as well as the activity undertaken by the Appellant, we find that there are two distinct transactions involved viz (a) a supply of required number of buses and bus passes by BMTC to the Appellant which will be operated by BMTC as per the schedule given by the Appellant; and (b) issue of monthly bus passes by the Appellant to the commuters (who are the employees of corporate clients in the International Tech Park) and scheduling the bus routes for the transport of the commuters. In the first transaction, BMTC is providing the service of operating the buses for the Appellant. The recipient of the service in this leg of the transaction is the Appellant since the consideration for the service of operating the buses and the supply of the bus passes (both AC and Non-AC), provided by BMTC, is made by the Appellant. As per the provisions of Section 2(93) of the CGST Act, 2017, the person who is liable to pay the consideration is defined as the 'recipient of supply of goods or services. The contract for transportation is entered into between the Appellant and BMTC. No doubt the commuters are the beneficiaries of this contract but that does not make them the recipients of the service provided by BMTC. The Appellant has advanced the argument that the beneficiary is the recipient of the service by relying on the case of Verizon Communication India Pvt Ltd which held that the recipient of service is one who benefits from the service. We find that the Delhi High Court decision in the cited case does not support the case of this Appellant. In the cited case, the Hon'ble High Court was examining the elements of export of service by Verizon India and in that context held that the subscribers to the services of Verizon US may be 'users' of the services provided by Verizon India but under the Master Supply Agreement it was Verizon US that was the 'recipient' of such service and it was Verizon US that paid for such service. It was also held by the High Court that in order to determine who the 'recipient' of a service is, the agreement under which such service has been agreed to be provided has to be examined. When the Master Supply Agreement between Verizon India and Verizon US is examined, it is plain that the recipient of the service is Verizon US and it is Verizon US that is obliged to pay for the services provided by Verizon India.

12. Drawing a parallel to the instant case, we find that in order to determine who, the recipient of service is, the agreement under which such service has been agreed to be provided, has to be examined. When the Agreement between BMTC and the Appellant is examined, it is plain that the recipient of the service is the Appellant and it is the Appellant that is obliged to pay for the services provided by BMTC. The position does not change merely because the actual users of the transportation service are the commuters. The 'recipient' of the service is determined by the contract between the parties and by reference to (a) who has the contractual right to receive the services; and (b) who is responsible for the payment for the services provided (i.e., the service recipient). This essential difference has been lost sight of by the Appellant. In the present case there is no privity of contract between BMTC and the commuters. Such commuters may be the 'users' of the services provided by BMTC but are not its recipients. This was lucidly explained by the CESTAT in the case of Vodafone Essar Cellular Ltd. v. CCE, Pune-III 2013-TIOL-566-CESTAT-Mum wherein the Tribunal held as follows:

"Your customer's customer is not your customer. When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party. For example, when a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend."

We therefore hold that the recipient of the service provided by BMTC is the Appellant and not the commuters.

13. The Appellant has also advanced the argument that they are an intermediary with respect to the supply of bus passes to the commuters; that they do not provide the transportation on their own account but only arrange for the service of transportation and therefore fall within the ambit of the definition of 'intermediary' as given in Section 2(13) of the IGST Act. The said Section defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account. In the instant case, the Appellant is not an agent of BMTC in providing the transportation to the commuters. The Appellant is neither appointed to act as broker nor an agent, nor it is appointed in any manner similar to that of a broker or agent. If that were the case, the same

would have been apparent from the agreement itself and thus the first condition to be satisfied for a person to qualify as an “intermediary” is not fulfilled. Further, in addition to defining the nature of person, the definition of the term ‘intermediary’ contains an exclusion in as much as any person (including a broker, agent or any other person) who provides the main supply on his own account is not covered under the definition of the term “intermediary”. The importance of this condition has been explained in the Education Guide released under the erstwhile service tax era, which holds true even under the GST regime. The Education Guide provides that a person ‘who arranges or facilitates a provision of a service, but provides the main service on his own account is excluded from the definition of ‘intermediary’. The Education Guide specifically recognizes and well explains that all situations of provision of services on a client’s behalf, will not qualify as an “intermediary”. Where the service is provided on the “own account” of the service provider, the categorization as an “intermediary” does not arise. The relevant extract of the Education Guide issued by the C.B.E. & C. in June 20, 2012 is reproduced:

“5.9.6 What are “Intermediary Services”? . . .

Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client on client’s behalf, but actually provided these services on their own account, will not be categorized as intermediaries.”

The clarification above fully recognizes an arrangement between a service provider and a service recipient, where customers of the service recipient are dealt with by the service provider, shall not qualify to be an “intermediary”. This principle well covers the present arrangement. The service is provided by BMTC to the Appellant as recipient but the customers of the Appellant are dealt with by the service provider. This arrangement does not make the Appellant an intermediary. We hold that the Appellant is receiving the services from BMTC on principal to principal basis and is also supplying a service to their clients on a principal to principal basis.

14. The Appellant has contended that recovery of bus pass amount cannot be treated as a supply of service nor can it be said to be an activity in the course of or furtherance of business. In this regard they relied on the Maharashtra AAR ruling in the case of Jotun India Pvt Ltd wherein it was held that recovery of 50% of the cost of insurance premium from the

employees cannot be treated as a supply of service of health insurance by Jotun India Ltd. We do not agree with this argument of the appellant for the reason that, the question before the Maharashtra AAR was whether the activity amounts to a supply of service or not. In the case before us, there is no dispute that there is a supply of service by the Appellant to the employees who use the transport facility. The question is whether such service is an intermediary service or a facilitation service between BMTC and the commuters. Therefore, the decision of the Maharashtra AAR in the Jotun India Pvt Ltd case has no relevance to the issue before us. The Appellant in this case, as part of its business activity of operating and maintaining the International Tech Park, also undertakes to arrange for the transport for the staff employed with it and by the various corporate clients of the Tech Park. In this connection, the Appellant charges a fee on their clients for whose employees they are providing the transport facility. This is a service provided by the Appellant to their clients' employees on their own account on a principal to principal basis as part of their business activity. The Appellant also acknowledges that they are rendering a service to the employees of their clients and they are also charging and collecting GST at 18% on such a service fee. This is evident from the copy of the invoice dated 10.07.2019 raised to M/s Applied Materials India Pvt Ltd, Bangalore for the issue of bus passes for the period from 01.07.2019 to 31.07.2019, which was furnished by the Appellant. It is also seen from clause 13 of the Agreement with BMTC that all commuters travelling in the buses engaged by the Appellant shall possess the identification cards and the monthly passes issued by the Appellant. This evidences that the bus passes procured by the Appellant from BMTC are issued by them to the commuters as part of the service provided by them on their own account. If they were merely facilitating the service or acting as an intermediary, as claimed by them, the bus passes would have been issued by BMTC to the commuters. In the light of the above discussions, we agree with the ruling given by the lower Authority and hold that the service provided by the Appellant in arranging the transportation of the employees is not rendered in the capacity of an intermediary and is not a facilitation service between BMTC and the commuters. The service of transporting the employees of the corporate clients of the International Tech Park is rendered by the Appellant on his own account on a principal to principal basis for a consideration.

15. We now come to the second aspect which is whether in terms of Section 15 of the CGST Act, the cost of the bus passes would form part of the value of the service provided by the Appellant.

16. It is the contention of the Appellant that the bus pass given by the Appellant to the commuter is an "actionable claim"; that the bus passes are an acknowledgment of receipt of money in advance for rendering services in the future; that as the money has been received in advance for the same, it can be contended that it constitutes a debt for the service provider. We have examined this contention. As per the definition provided in Section 2(52) of the CGST Act, 2017, "Goods" includes "actionable claims". However, clause 6 of Schedule III of the CGST Act, treats actionable claims other than lottery, betting and gambling as neither a supply of goods nor a supply of services. Therefore, only lottery, betting and gambling shall be treated as actionable claims which are goods under GST. All other actionable claims shall not be treated as either goods or service. Section 2(1) of the CGST Act states that "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882. Section 3 of the Transfer of property Act 1882 defines "actionable claim" as *"a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognize as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent"*.

17. When we analyse the above definition, it is clear that the term "actionable claim" has got two limbs. One is that it is a claim to any unsecured debt. The second limb is about claim to beneficial interest in movable properties not in actual or constructive possession of the claimant which shall be recognized as affording ground for relief by a civil court. These two categories of claims can be existent, future, contingent or conditional. However, every claim is not an actionable claim. It must be a claim either to a debt or to a beneficial interest in movable property. The beneficial interest is not the movable property itself, and may be existent, accruing, conditional or contingent. The movable property in which such beneficial interest is claimed, must not be in the possession of the claimant. An actionable claim is therefore an intangible right. The Appellant has likened the bus passes to recharge vouchers and have relied on the West Bengal Tax Tribunal decision in the case of Bharti Airtel Ltd vs ACST [2010 (34) VST 202] wherein it is held that recharge vouchers are acknowledgment of receipt of money in advance for rendering telecom services in future and as the money has been received in advance, it constitutes a debt to the service provider. At the outset we state that the case of Bharti Airtel Ltd was rendered by the West Bengal Tax Tribunal in the context of Sale of Goods Act wherein the definition of 'goods' under the said Act excluded

actionable claims. Under GST law however, 'Goods' have been defined to include actionable claims. Further, under GST, 'voucher' is specifically defined in Section 2(118) to mean "*an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument*". It is further observed that the definition of 'Voucher' has been added to the CGST Act after discussion in the GST Council, while approving the draft Acts. The related portion of the Minutes of the 5th GST Council Meeting held on 2nd & 3rd December, 2016 in New Delhi, wherein the need for definition of 'Voucher' to be brought in to the CGST Act is reproduced hereunder:

11(XIX). Section 12(4) (Time of supply of goods) : The Hon'ble Minister from West Bengal stated that the term 'voucher' was not defined and it was not clear whether it was goods or services. The CCT, Gujarat clarified that if vouchers were given for use in a grocery store, the point of supply of goods shall be fixed through this provision. The Secretary suggested to define the term 'voucher' in the Definitions section. The Council agreed to define the term 'voucher' in the Definitions section.

13(XVIII). Section 12(4) (Time of supply of goods) : To define the term 'voucher' in the Definition section.

From the above, it is amply clear that those instruments which satisfy the conditions of being accepted as consideration/part consideration against purchase of specified goods and the identities of the potential suppliers are indicated in the instruments are to be considered as 'Vouchers' for the purposes of GST. Vouchers are neither money nor actionable claim. It is not a claim to a debt nor does it give a beneficial interest in any movable property to the bearer of the voucher. Similarly, in the instant case, the bus passes are purchased by the commuters on paying a value in money. The commuter produces the bus pass for purchasing the service of transportation. The bus pass only give the commuter the right to travel. If the commuter does not use the bus pass within the duration for which it is valid or loses the bus pass, it becomes invalid and cannot be used to procure the service of transportation. The bus pass is only a contract of carriage. A contract is not property, but only a promise supported by consideration. Thus, the bus pass is not an actionable claim as defined under Transfer of

Property Act. It is only an instrument accepted as consideration/part consideration while purchasing the service from the Appellant. Therefore, we do not agree with the claim of the Appellant that the bus pass is an actionable claim not liable to GST. We agree with the ruling given by the lower Authority and hold that by virtue of Section 15 of the CGST Act, the value of the service supplied by the Appellants will include the value of the bus passes as well as the facilitation charges.

18. In view of the above discussion, we pass the following order

ORDER

We uphold the Advance Ruling No KAR/ADRG 114/2019 dated 30-09-2019 and dismiss the appeal filed by M/s Ascendas Services (India) Pvt. Ltd on all counts.



(D.P.NAGENDRAKUMAR)

Member

Karnataka Appellate Authority
for Advance Ruling



(M.S. SRIKAR)

Member

Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Principal Commissioner of Central Tax, Bangalore East Commissionerate
4. The Assistant Commissioner, LGSTO-035A, Bangalore
5. Office folder