2024 TAXONATION 1720 (TAMILNADU-AAR)

TAMILNADU-AAR

A. R. Appeal No. 03/2024 AAAR, Order No. AAAR/8/2024 (AR),

Faiveley Transport Rail Technologies India Private Limited-Appellant

Coram: Sh. Ashish Varma and Dr. D. Jagannathan, I.A.S., Member

Date of order: 10/07/2024

Decision: Case Dismissed

Held that-The case revolves around an appeal filed by Faiveley Transport Rail Technologies India Private Limited against a ruling by the Tamil Nadu State Authority for Advance Ruling (AAR). The appeal concerns the applicability of GST on a car lease facility extended to employees as part of their employment benefits. The company argued that the car lease should be considered a perquisite under the Income Tax Act and, therefore, exempt from GST under Entry 1 of Schedule III of the CGST Act, 2017. However, the AAR ruled that GST is applicable because the car lease does not qualify as a perquisite when the entire lease premium is recovered from employees. The appellant contended that this facility was provided as part of the overall cost-to-company (CTC) and should not be taxed. After reviewing the case, it was concluded that only the actual monetary value extended to employees qualifies as a perquisite. The car lease amount recovered from employees is not considered a perquisite and is subject to GST. The ruling by the AAR was modified accordingly.

Appearance:

Shri Ganesh Kumar, Chartered Accountant Shri Mohit Shanna, Head of Indirect Tax For the Petitioner

JUDGMENT

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in pari materia and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

2 The subject appeal was filed under Section 100 (1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by Faiveley Transport Rail Technologies India Private Limited (hereinafter referred to as 'Appellant'). The Appellant was registered under the GST Act vide GSTIN 33AAGCS8525B1ZL. The appeal was filed against the Advance Ruling No.125/AAR/2023 dated 20.12.2023 passed by the Tamilnadu State Authority for Advance ruling ('AAR') on the Application for Advance ruling filed by the Appellant.

3.1 The Appellant is a Private Limited company under the administrative control of 'STATE' and they are engaged in the business of manufacturing, supplying and exporting equipment for the Rolling Stock industry. The said equipment includes, inter alia, railway door systems, grills for train coaches, braking systems and pantographs for railways. The Appellant had applied for Advance Ruling vide application ARA-01 No.3/2023 dated 29.12.2022, with regard to certain queries on applicability of GST and eligibility of ITC, with the ***AAR who vide Ruling No. 125/AAR/2023 dated 20.12.2023*** pronounced the decisions for the respective queries raised by the Appellant.

3.2 Aggrieved over one such decision on the issue relating to the query, viz., ***"Whether GST is applicable on facility of car extended to the employees of the Applicant-Company in the course of employment",*** where the AAR had ruled that GST is applicable on such services, the Appellant has filed the present appeal. Under the grounds of appeal as submitted by the Appellant, they have contended that the facility of car lease provided to the employees under the employment contract will qualify as a perquisite under the Income Tax Act, and accordingly would be exempt from payment of GST, as it gets covered under Entry 1 of Schedule III of the CGST Act, 2017.

3.3 It was seen that along with the 'Grounds of Appeal' filed with the Appeal Application in Form GST ARA-02, the appellant had also enclosed a 'Petition for condonation of delay', as the appeal was filed after a delay of 27 days, beyond the normal time limit of 30 days from the date of receipt of the order. Accordingly, an opportunity of personal hearing was accorded to the appellant on 14.05.2024 for the limited purpose of condonation of delay. It was stated that as Shri Ganesh Kumar, Chartered Accountant, who was entrusted with the responsibility of preparing and filing the appeal, was not keeping well during the relevant period of time, the appeal could not be filed in time. As the appellant presented sufficient cause that prevented them from filing the appeal within the normal period, by way of providing documentary evidences, the delay in filing the appeal was condoned vide ***Order-in-Appeal No. AAAR/06/2024(AR) dated 21.05.2024***.

3.4 Accordingly, the appeal is now taken up for consideration on merits. The Appellant has stated that Company has proposed to provide the facility of car to its employees in the course of employment. According to the arrangement, the Company will pay the lease premium directly to car leasing company. Overall Salary cost of the related employees will get reduced to the extent of cost incurred by Company to extend the expense incurred in relation to the car facility provided to employees for office purpose. Facility of car extended to employees is considered as perquisite under Income Tax Act, 1961 and due tax is required to be paid by employees on it under the head Income from Salary. They further stated that in the instant case, the provision of the Car lease premium to employees is not being carried out as a business activity. The appellant quoted the CBIC vide Circular No. 172/04/2022-GST dated 06.07.2022, wherein it has been clarified that any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by

employee to the employer in relation to his employment. As the Company is willing to provide the facility of car lease to the employees of the Company in terms of the HR policy, the same is a perquisite for the employees, and accordingly, in terms of the above-mentioned Circular, recovery from employees in relation to car lease premium will not be exigible to GST.

3.5 It is seen that the AAR had arrived at the decision that GST is applicable on the facility of car extended to the employees of the company, based on the following discussions held therein, viz.,-

- *Entry 1 of Schedule III of the CGST Act, 2017, states that 'services by an employee to employer in the course of or in relation to his employment' shall be neither supply of goods nor supply of services.*
- *CBIC Circular No. 172/04/2022-GST dated 06.07.2022 in its para 2 of clarification to issue No.5, states that "Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment'. It follows therefrom that **perquisites** provided by the employer to the employee in terms of **contractual agreement** entered into between the employer and the employee, **will not be subjected to GST** when the same are provided in terms of the contract between the employer and employee."*
- *Extracts of the employment contract/agreement, relating to the issue in question were not furnished by the appellant.*
- *Notwithstanding the same, as the entire lease premium incurred by the company was admittedly recovered from the employees concerned in actuals, the same does not qualify as a 'perquisite'.*
- *When the appellant provides the said service to their employees on their own account, and when the element of 'perquisite' is absent in the instant case, GST is applicable on the facility of Car extended to the employees of the Applicant-Company, even if it is in the course of employment.*

3.6 Aggrieved of the above decision of AAR in ***Advance Ruling No. 125/AAR/2023 dated 20.12.2023***, the appellant has filed the present appeal. The grounds of appeal as submitted by the appellant, are under the following broad heads :-

A. The -facility of car lease provided to employees under employment contract will qualify as perquisite under Income Tax Act, 1962;

B. Stipulation of eligibility criteria for availing car lease facility is immaterial to ascertain whether the same is perquisite or not;

C. Salary, including the perquisites provided by employer to employee in exchange of his services under employment contract is covered under Entry 1 of Schedule III of the CGST Act and not subject to GST;

D. The car lease policy was not in existence during the filing of AAR and therefore, the same were submitted only during the course of the hearing;

E. Ownership of the car is irrelevant in determining if the same is to be treated as perquisite by the appellant-company.

PERSONAL HEARING;

4.1 Shri Ganesh Kumar, Chartered Accountant, and Shri Mohit Sharma, Head of Indirect Tax, the authorized representatives (AR) of the company, appeared for the Personal Hearing on 04.07.2024. The AR reiterated the submissions made by them in the 'Grounds of Appeal' filed with the application.

4.2 The AR stated that the ruling passed by AAR on the issue relating to applicability of GST on facility of car extended to the employees of the Appellant-Company in the course of employment was based on the following four counts, viz., that the facility of car is not extended to all employees of the company in general; that the ownership of car lies with appellant company during the lease period; that the appellant has rendered such services on their own account; and, that the entire amount incurred has been recovered from the employees by the appellant-company.

4.3 The AR contended that not extending the car facility to all employees cannot be a ground to arrive at the conclusion that the said services are taxable. Regarding the ownership of car, the AR admitted that the ownership of the car indeed lies with the company during the lease period, but the physical possession of the car lies with the employee concerned, and at the end of the lease period, he/she has the option to give the car back to the leasing company, or pay the residual value and take possession of the vehicle. The AR argued that it is incorrect to say that the appellant has rendered such services on their own account, as they are not into the business of leasing cars, and as the said facility is available only to the specific employees of the company and not to any third party. With regard to the recovery of the entire amount incurred by the company in this regard, the AR stated that though the lease amount is recovered in full, they extend the benefit of incurring certain expenses on behalf of the employee like Road Tax, etc.

4.4 When the Members enquired whether the aspect of absorbing expenses like Road Tax on behalf of the employee is a new ground of contention put forth in this hearing, or whether the same has been discussed in the 'Statement of facts' or the 'Grounds of Appeal' at any other point of time, the AR admitted that this has not been discussed by them so far.

4.5 The Members further invited the attention of the AR to the furnishing of 'Employment contract' and the 'Car Lease Policy' forming part of it, which the appellant claims to have furnished during the personal hearing before the AAR on 14.11.2023. The AR replied that the same was furnished along with the Appeal application filed by them. When it was pointed out that no such document has been furnished by the appellant so far in this regard, the AR admitted to the lapse on their part and undertook to furnish the same in a couple of days' time.

4.6 The appellant finally stated that when a benefit is extended to the employee, whether in cash or kind, and when the same is extended in the course of employment, it fulfills the ingredients of a 'Perquisite', and accordingly, taxes under GST are not chargeable on the same, as it falls within the scope of Entry 1 of Schedule III of the CGST Act, 2017.

4.7 As undertaken, the AR through their e-mail dated 06.07.2024 conveyed that they are submitting the Car Lease Policy and Form-16 of one of their employees who has opted for car lease alongwith a covering letter/additional submission, in continuation of the personal hearing dated 04.07.2024, with a request to take the following documents on record, viz.,-

(i) The covering letter for car lease

(ii) Employee Car Lease Policy

(iii) Form 16 Part-A

(iv) Form 16 Part-B

(v) Form 12BA

(vi) Personal Hearing record

4.8 On perusal of the documents furnished, it is seen that under the covering letter dated 05.07.2024, apart from reiterating the contentions already put forth by the appellant, they have laid emphasis on the following points, viz.,

(1) When an eligible employee opts to take a car on lease, instead of car allowance or variable allowance, the appellant will pay the EMI for the car to the car lease service provider and an equivalent salary will not be paid to the employee in cash;

(2) In other words, what is getting paid to the employee is essentially their salary only which is being paid in the form of a facility in lieu of their salary in their bank account; and that they are submitting the below mentioned documents in support of their argument, i.e.,

(a) Employee Car Lease Policy

(b) Form 16 along with Form 12 BA of an employee who has opted for the car lease policy, with a rider reading "Please note that the name and PAN of the employee has been concealed/blacked out owing to the confidential nature of the documents and in order to protect privacy of the individual.".

4.9 They further stated that perusal of the documents furnished by them, especially the Form 12 BA which provides the break-up of perquisites, conveys the fact that car lease facility is a perquisite/benefit provided by the appellant to its employees in lieu of his salary and clearly such facility is extended in the course of employer-employee relationship, on which Income Tax has been paid as well. The appellant therefore concluded that such facility would qualify as a 'perquisite' under the Income Tax Act, and hence should not be chargeable to GST as per the Circular No. 172/04/2022-GST dated 06.07.2022.

DISCUSSION AND ANALYSIS

5.1 We have carefully considered all the material available on record, the applicable statutory provisions, various submissions made by the Appellant in the 'Grounds of Appeal', and during the personal hearing. On the applicability of GST on the facility of car extended to employees in the course of employment, it was stated by the appellant that the Company will pay the lease premium directly to car leasing company and the overall Salary cost of the related employees will get reduced to the extent of cost incurred by Company to extend the expense incurred in relation to car facility provided to employees for office purpose; that the facility of car extended to employees is considered as perquisite under Income Tax Act, 1961 and due tax is required to be paid by employees on it under the head Income from Salary; that the provision of the Car lease premium to employees is not being carried out as a business activity; that CBIC vide its Circular No. 172/04/2022-GST dated 06.07.2022 has clarified that any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment; that as the Applicant-Company is willing to provide the facility of car lease to the employees of the Company in terms of the HR policy in the

instant case, the same is a perquisite for the employees. Accordingly, the applicant contended that in terms of the above-mentioned Circular, recovery from employees in relation to car lease premium will not be exigible to GST.

5.2.1 Under the 'Grounds of Appeal' filed in the instant case, the appellant has contended that the facility of car lease provided to employees under employment contract will qualify as perquisite under Income Tax Act. In this regard, the appellant has argued that as a standard industry practice, the sum total of salary payable including all the allowances and various benefits extended to the employees by the employer is treated as Cost-to-Company ('CTC'). That in order to ascertain whether the car lease policy is classifiable under Entry 1 of Schedule-Ill, it would be imperative to understand the structure of car lease policy and its impact on CTC of the eligible employees. Having floated the car lease scheme in 2023, the policy has been extended to certain band of employees based on their seniority as per organizational structure. The salient features of the car lease policy was summarized as below,-

- *The car lease facility enables the employees of the Appellant-Company to lease a car from car leasing Company appointed by the Appellant-Company;*
- *Appellant-Company owns the car for the lease period and the employees can take the car on lease;*
- *Employee will be sanctioned the Car Lease based on his affordable salary structure;*
- *The instalments for each month for a period of 4 years (lease term) will be adjusted the employees from their CTC;*
- *In case of employees who opt for the car lease policy, the CTC structure will be reshuffled internally. However, the overall cost to Appellant-Company will remain the same;*
- *After the end of the lease term, the employee will have an option to either transfer the ownership of the car on her/his name or handover the car to the leasing Company.*

5.2.2 Accordingly, the appellant has drawn the following inferences, viz.,

- *The CTC shall remain the same, irrespective of whether an employee opts for the car lease policy or not.*
- *The car lease facility is provided only on the basis of employer-employee relationship and in the course of employment. Once a person ceases to be an employee of the Appellant-Company, he cannot avail the facility.*
- *When two employees are compensated equally and are eligible for Car Lease Policy, and only one employee avails the said facility, their Gross salary/CTC remains the same. Where an employee avails the facility, a portion of the compensation is adjusted to the extent of instalment to be borne by him, which is nothing but a benefit extended in lieu of the "Other allowance' component of the salary/compensation of the concerned employee.*
- *To substantiate the same, the appellant annexed the table as below in para A6 of the 'Grounds of Appeal', as an illustration where both 'Employee A' and 'Employee B' are compensated equally and are eligible for Car Lease Policy and the said policy is being availed only by 'Employee A'.*

Sr.No.	*Particulars*	*Employee A (opts for Car Lease)*	*Employee B (does Not opt for Car Lease)*
A	*Basic Pay*	*10,00,000*	*10,00,000*
B	*Add : Allowances*		
Bl	*House Rent Allowance*	*7,50,000*	*7,50,000*
B2	*Other Allowances*	*22,50,000*	*32,50,000*
B3	*Car Lease 1*	*0,00,000 -*	
C	*Gross Salary*	*50,00,000*	*50,00,000*
D1=A+B1+B2	*Salary Payable in cash*	*40,00,000*	*50,00,000*
D2-B3	*Benefit of Car Lease amount adjusted from Overall compensation 10,00,000*		
	Total CTC to the employee	*50,00,000*	*50,00,000*

5.2.3 With respect to the taxability of such benefit, the appellant has invited reference to the clarification concerned as in the CBIC's Circular No. 172/04/2022-GST dated 06.07.2022, and has stated further that the term 'perquisite' has not been defined under the CGST Act, but defined under section 17 (2) of the Income Tax Act, that reads as follows:-

> *"Perquisite includes:*
>
> *(i) the value of rent-free accommodation provided to the assessee by his employer;*
>
> *(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;*
>
> *----------*
>
> ***(viii) the value of any other fringe benefit or amenity as may be prescribed".***

Accordingly, the appellant contended that the value of any benefit provided to an employee is classifiable as perquisite and that nowhere in the definition, it provides that the employer must bear a part of the cost of the benefit provided to the employee, and as long as any benefit is provided to the employee, the same qualifies as perquisite.

5.2.4 The appellant has also placed reliance on the ***Ruling No. AAR/ST/16/2015 dated 4.12.2015 of the Authority of Advance Ruling, New Delhi in the case of M/s.JP Morgan Services India (P) Ltd.,*** wherein under identical facts, it was held that car lease facility extended to employees, where the entire amount was recovered from the employee, would not be chargeable to Service Tax. The appellant further argued that what is required to be ascertained is whether the facility of car lease is provided in the course of or in relation to the employment, and that the fact whether the cost is being entirely recovered from the employees or a part of the same is borne by the Appellant-Company is irrelevant for determining whether the facility is perquisite or not. The appellant was also of the view that the car lease amount is not recovered from the concerned employee and is part of the overall compensation/CTC and therefore, the cost of such facility is eventually borne by the Appellant company. In view of the above, it was stated by the appellant that the impugned ruling of the TNAAR is bad in law and unsustainable.

5.2.5 In the instant case, the Appellant-Company reportedly pays the lease premium directly to car leasing company, and the overall salary cost of the related employees will get reduced to the extent of cost incurred by company in relation car facility provided to employees for office purpose. In order to ascertain whether the instant transaction constitutes a 'Supply' or not, the basic fact as to whether the facility extended qualifies as a 'Perquisite' or not, is required to be determined in the instant case. The applicant claims the same to be a 'perquisite' for the employees and in terms of the CBIC Circular dated 06.07.2022, recovery from employees in relation to car lease premium will not be exigible to GST.

5.2.6 In this regard, we notice that Entry No. 1 of Schedule III of the CGST Act, 2017, states that "services by an employee to employer in the course of or in relation to his employment" shall be neither supply of goods nor supply of services. It could be seen here that the said entry in Schedule III basically deals with 'services by an employee to employer', and not the other way round. However, the 'services by the employer to employee', when provided in the form of perquisites, has been discussed in para 2 of clarification to issue No.5 of the CBIC Circular No. 172/04/2022-GST dated 06.07.2022, wherein it has been clarified as below:-

> *"Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee."*

From the above, it could be inferred that perquisites provided by the employer to the employee in terms of a contractual agreement do not constitute a 'supply' and as such are to be kept outside the ambit of GST. Therefore, the moot point here is that in order to get covered under Entry No. 1 of Schedule III of the CGST Act, 2017, two basic conditions are required to be met, viz., (i) the activity qualifies as a 'perquisite', and (ii) the perquisite provided by the employer should be in terms of a contractual agreement. Accordingly, the terms of such employment contract/agreement, is required to be taken up for discussion in the instant case. However, we notice that the appellant has not furnished copies of any such employment contracts/agreements, or even the excerpts from the same, concerning the issue in question. When the Members enquired specifically about this aspect during the personal hearing held on 04.07.2024, the AR admitted to the lapse on their part and undertook to furnish the same. Accordingly, they furnished a copy of the same that read as 'Policy Manual, 2024' dated 01.03.2024, through their e-mail dated 06.07.2024.

5.2.7 On perusal of the Car Lease Program, under the 'Policy Manual 2024', the following key features were noticed, viz., that the car will be on the legal entity name of the company; that the company bears **the road tax and registration** for the leased vehicle; the **Annual Insurance Premium** for the duration of the lease period is also paid by the company; that the Employee pays the EMI each month for a period of 4 years (lease term) from her/his salary; that this policy is effective from 1st April 2024 onwards; that all existing car leases will continue in the earlier lease structure till end of lease tenure as per the lease agreement, etc. Accordingly, the Employee Car Lease Policy furnished by the appellant is considered and taken on record.

5.2.8 It is further seen that during the personal hearing on 04.07.2024, the appellant came up with a new ground that they incur and absorb certain expenses like Road Tax on behalf of the employee, but they admitted that the said ground has not been discussed by them in the 'Statement of facts' or the 'Grounds of Appeal' or at any other point of time. Though the appellant did not furnish any document relating to the incurring of expenditure on road tax, registration, etc., they furnished the documents like Form-16 (Part A & B) and Form No. 12BA for the financial year 2023-24 in respect of a specific employee who has availed the car lease facility, under their e-mail dated 06.07.2024. On perusal of the same, it is seen that an amount of Rs. 21,600/- has been reflected against the row '1(b) - Value of perquisites under section 17 (2) (as per Form No. 12BA, wherever applicable)' in Form No. 16 (Part B) relating to the said employee. Perusal of Form No.l2BA (Statement showing particulars of perquisites, fringe benefits or amenities and profits in lieu of salary with value thereof) reveals that the amount of Rs.21,600/- is reflected against 'Sl.No. 2 - **Cars/Other automotive',** as the value of perquisites.

5.2.9 Apart from the aspect relating to employment contracts, it may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the primary requirement is that the same should qualify as a 'perquisite'. In this regard it is seen that though the term 'perquisite' has not been defined anywhere under the provisions of GST, the same is defined under Section 17 (2) of the Income Tax Act, 1961, as follows :-

> *"perquisite" includes,-*
>
> *(i) the **value** of rent-free accommodation provided to the assesses by his employer;*
>
> *(ii) the **value** of any concession in the matter of rent respecting any accommodation provided to the assesses by his employer;*
>
> *(iii)----------"*
>
> *(viii) the **value** of any other fringe bene fit or amenity as may be prescribed"*

5.2.10 It could be further inferred from the above, that any facility extended free of charge, or, any facility extended on a concessional basis shall qualify as a perquisite. We further observe that a perquisite refers to a "**Value**" in monetary terms in respect of the facility extended by the employers to their employees. Most importantly, the analogy of clause (ii) as above that reads as *"the **value of any concession** in the matter of rent respecting any accommodation provided to the assesses by his employer",* confirms the fact that only the value/portion to the extent of benefit extended, concession offered or the expenses, if any, borne by the employer is to be treated as a perquisite and not the remaining portion/value that has been charged and recovered by the employer as in the case of car lease premium. Form No.l2BA of the employee concerned, furnished by the appellant indicates that an amount of Rs.21,600/- is the valuation of perquisites relating to car for the entire financial year 2023-24. The value of this perquisite which gets added to the salary of the concerned employee is the actual benefit that accrues to the employee. Therefore, it becomes clear that in respect of the services relating to car lease provided by the applicant to its employees, the provisions of Entry 1 of Schedule III to the CGST Act, 2017 applies only to the value of the actual benefit in monetary terms extended to the employees, and not on the value of car lease premium charged and recovered on actual terms from the employees.

5.2.11 We further find that in the instant case, having paid the lease premium directly to car leasing company, the appellant admittedly deducts the exact amount from the salary of the employees concerned, i.e., to the extent of cost incurred towards the leasing of cars by the Company. We are therefore of the opinion, that extending a mere facility does not qualify as a perquisite; that a value in monetary terms is required to be extended to the employees; and that the value of perquisite for consideration is restricted to the value of actual monetary gain extended as in Form 12BA. Therefore, the contention of the appellant that extending the facility of car lease is nothing but a benefit extended to the concerned employee, is not sustainable and does not support their stand. As seen from the illustrative table annexed in para A6 of the 'Grounds of Appeal' filed by the appellant, the salary payable in cash (Sr. No. D1) of 'Employee A' who opts for car lease stands reduced to the extent of car lease amount involved, as against the emoluments accruing to 'Employee B' who does not opt for car lease. Accordingly, the view of the appellant that the car lease amount is not recovered from the concerned employee and is part of the overall compensation/CTC and that the cost of such facility is eventually borne by the Appellant-company, is partly misconstrued and misplaced.

5.2.12 This apart, we observe that in such cases, the cars are normally booked under the name of the company/organization, and it admittedly remains with them during the period of lease. Having received the services for the company, the appellant in turn extends the same to their employees, on actual basis. We are of the opinion that this amounts to provision of services by the appellant on their own account to their employees. Once the applicant themselves admit that they do no bear any cost, or absorb any portion of the cost incurred, and when the entire lease premium is recovered from the salary of the employees concerned, we are of the opinion that the amount recovered do not qualify as a 'perquisite' by any means whatsoever, and therefore the transaction in the instant case, does not get covered within the ambit of entry 1 of Schedule III of the CGST Act, 2017, even if it is in the course of employment.

5.2.13 We notice that the appellant has placed reliance on the ***Ruling No. AAR/ST/16/2015 dated 4.12.2015 of the Authority of Advance Ruling, New Delhi in the case of M/s.JP Morgan Services India (P) Ltd.,*** wherein under identical facts, it was held that car lease facility extended to employees, where the entire amount was recovered from the employee, would not be chargeable to Service Tax. In this regard, it becomes imperative to point out that advance rulings are applicant-specific and it applies only to the applicant who had sought it. However, given the similarity of the issues involved, the persuasive value that it brings to the issue in hand needs to be considered. We notice that Advance Ruling dated 4.12.2015 referred to by the appellant relates to the point of time prior to 1.07.2017, during which the provisioning of 'service' was the taxable event, and when the provisions of the Finance Act, 1994 was in force. The phrase "There can be no dispute that the service of "making available" a car to the employee is being rendered by the applicant", in para 7 of the Advance Ruling dated 4.12.2015, brings out the crucial fact that a service is actually rendered in such cases. When the concept "Supply" of goods or service came into existence, under the GST enactments with effect from 1.07.2017 onwards, the taxability depended on both the grounds, viz., whether a 'service' is rendered, and whether the said service qualifies as a 'supply' under GST. We are of the opinion that the case of M/s. JP Morgan Services India (P) Ltd., as in the advance ruling referred above, becomes distinguishable on this aspect, and additionally, the concept of 'perquisite' gets appended to the instant issue to determine whether the said activity or transaction gets covered under 'supply' or not. Therefore the impugned ruling referred by the appellant is not applicable to the instant case.

5.3.1 The appellant puts forth the contention that eligibility criteria for availing the car lease facility is immaterial to ascertain whether the same is perquisite or not. It has been stated that the TNAAR in the impugned ruling had held that the circumstances relating to car lease premium differs basically from the other cases in view of the fact that these types of car facility are normally provided to few specific employees of the organization, and that they are not general in nature. The appellant admits the fact that the facility of car lease is not provided 'en masse', but to eligible employees only. However, it is immaterial to ascertain whether the scheme would quality as 'perquisite' or not. The appellant has drawn attention to the definition of 'perquisite' as per the Black's law dictionary which is as below:-

> *"Emoluments, fringe benefits, or other incidental profits or benefits attaching to an office or position. Shortened term "Perks" is used with reference to such extraordinary benefits afforded to business executives (e.g. free cars, club memberships, insurance, etc.)"*

It was therefore contended by the appellant that perquisite is nothing but a fringe benefit provided to an employee and that the term 'attaching to an office or position' is indicative that the same may be provided to certain employees holding certain position in the company. Accordingly, since other similar benefits such as leased accommodation or interest free loan are also provided to specific employees, but they are considered as perquisites, irrespective of the fact that the same may not be extended to other employees.

5.3.2 We are in complete agreement with the contention of the appellant that the eligibility criteria for availing any facility is immaterial to ascertain whether the same is perquisite or not. However, on perusal of the impugned ruling dated 20.12.2023 of AAR, we find that in para 8.5.2, the AAR had just discussed the difference in nature of the various facilities, viz., the canteen facility, mass transportation facility, etc., which were also extended by the appellant in the instant case. We find that the AAR attempts to determine the taxability or otherwise of the case in question only in para 8.5.3, that begins thus "Notwithstanding the same, in order to ascertain whether the instant transaction constitutes a 'Supply' or not, the basic fact as to whether the facility extended qualifies as a 'Perquisite' or not, is required to be determined in the instant case.". We therefore feel that the contentions of the appellant on this score is misplaced, as it is seen that the AAR has not linked the eligibility criteria of employees to taxability in the instant case, but has only attempted to distinguish the nature of other such facilities provided by the appellant.

5.3.3 As regards the appellant's referral to the definition of 'perquisite' as per the Black's law dictionary, though the same is indicative that such benefits may be provided to certain employees holding certain position in the company, it also defines the term 'perquisites' as "Emoluments, fringe benefits, or other incidental profits or benefits". It is to be noticed here that as discussed already, perquisites are seen as emoluments, benefits or profits, even in general parlance, and that they traverse beyond mere facilities provided. Further, the examples provided under the referred definition read as "e.g. free cars, club memberships, insurance, etc.", which goes to prove that a 'perquisite' is not just about providing a car facility and claiming back or recovering the cost of the car or the leasing of car. Rather, it is about providing facilities like cars, club memberships, insurance etc., free of charge or on concessional basis, so that the facilities extended are seen as benefits at the hands of the employees. The definition of 'perquisite' under Merriam Webster runs as "a privilege, gain or profit incidental to regular salary or wages-especially : one expected or promised". Here again, the terms 'privilege', 'gain', 'profit', etc., point to the fact that only value in monetary terms are seen as perquisites.

5.4.1 The other point of contention of the appellant was that salary, including the perquisites provided by employer to employee in exchange of his services under employment contract is covered under Entry 1 of Schedule III of the CGST Act, which reads as "Services by an employee to the employer in the course of or in relation to his employment", and that the same is not chargeable to GST, as such activities or transactions shall be treated neither as a supply of goods nor a supply of services. The appellant states that the cost of the car lease policy is not a separate cost to the company, but a component of the overall CTC of the employee, and as the facility provided is in their course of employment, it falls clearly within the scope of Entry 1 of Schedule III of the CGST Act.

5.4.2 In this case, the appellant themselves admit the fact that car lease policy is not a separate cost to the company. Understandably, when the actual expenses incurred are recovered in full from the employees concerned, it does not affect the employer and it affects only the net salary receivable by the employee. It is pertinent to observe here the case of other facilities like the canteen facility or the mass transportation facility, which when provided free of cost or on concessional basis, adds as a cost to company (CTC), and in such cases actual benefit accrues to the employees on monetary basis. Therefore, we are of the considered opinion that only such benefits qualify as 'perquisites' and when they are provided in terms of the employment agreement, they clearly fall within the scope of Entry 1 of Schedule III of the CGST Act. On the other hand, the facility of Car lease as in the instant case, even when provided in terms of the employment agreement, do not fall under the said category, as they do not qualify as a 'perquisite' as discussed in detail above.

5.5.1 The appellant states that the car lease policy was not in existence during the filing of AAR and therefore, the same were submitted only during the course of the hearing. They stated that vide para 8.5.5 of the impugned ruling, it has been alleged that the appellant has not furnished the copies of employment contract/agreement or even the excerpts from the same, concerning the issue in question. In this regard, the appellant clarifies that vide para 6 of the application, they have stated categorically that ***"the Applicant company has proposed to provide the facility of car to its employees in the course of employment".*** They further stated that the car lease policy came into effect only on 03.05.2023, and therefore the same could be furnished during the filing of the application, but were furnished during the course of hearing on 14.11.2023.

5.5.2 In this regard, it was seen from the material available on record that, no employment contract/agreement has been furnished by the appellant. During the personal hearing held before the AAR on 14.11.2023, the appellant is seen to have furnished copies of various rulings, case laws and other such documents in support of their defence. On perusal of the documents furnished, it is seen that an extract of the 'Human Resources Manual' has been filed by them, that contains excerpts about Travel Rules, Kit allowance, Canteen, Uniform, Mobile phone facility and Family Occasions Memento. Under the head Travel Rules', "A detailed travel policy is enclosed as Annexure-r is mentioned, but no such Annexure-I was seen to be enclosed. Finally, as undertaken during the personal hearing held on 04.07.2024, they famished a copy of the same that read as 'Policy Manual, 2024' dated 01.03.2024, through their e-mail dated 06.07.2024, which is considered and taken on record.

5.6.1 The appellant finally states that the ownership of the car is irrelevant in determining if the same is to be treated as perquisite by the appellant-company. They have stated that under para 8.5.7 of the impugned ruling of the AAR, it was held that cars are normally booked under the name of the company and it will remain so, for a specific period, until the lease period is over. In this regard, the appellant admits that the car is bought in the name of the Appellant-company,

and that after the end of the lease, the employee is required to transfer the car to his name. However, merely because the car is bought on lease in the name of the Company, it cannot be said the facility is being provided on its own account. The car lease facility provided is nothing but a scheme for the benefit of the employees provided out of employer-employee relationship, as evident from the Transit Car Policy submitted. The appellant submits that they act as a facilitator between the car lease company and the employees, and that the same qualifies as a perquisite, irrespective of the ownership of the car. Accordingly, the appellant submits that to the extent the impugned order holds car lease facility as a non-perquisite and consequently taxable, is unsustainable and bad in law.

5.6.2 The appellant's submission that they act as a facilitator between the car lease company and the employees, is misplaced inasmuch as the ownership of the cars remains admittedly with the company when they procure these services upfront for the company. And when these facilities are extended to the employees, it amounts to rendition of services to the employees on their own account in the course of or in relation to employment, which fact is also confirmed through the Advance Ruling dated 4.12.2015 in respect of M/s.JP Morgan Services India (P) Ltd., referred by the appellant in support of their defence. It is to be clarified here that an organization shall claim themselves to be a facilitator only in such cases when they receive services upfront for the employees like canteen or mass transportation facility from third party contractors. Therefore, we are of the opinion that ownership of car by the company and resultant provisioning of services by the company on their own account amounts to 'supply' of services by them, and this aspect has a direct bearing in determining the taxability in the instant case.

6. In fine, we are of the considered opinion that within the facts and circumstances of the case, only the actual value in monetary terms extended to the employee concerned in the course of or in relation to employment, qualifies as a 'perquisite', and it squarely falls within the ambit of entry No. 1 of Schedule III of the CGST/TN GST Acts, 2017. Whereas, the car lease amount recovered in actual terms by the appellant-company while extending the facility of car to its employees, cannot be considered as a 'perquisite' and accordingly taxes under GST are applicable on the same, as it does not get covered under the entry No. 1 of Schedule III of the CGST/TNGST Acts, 2017.

7. In view of the detailed discussion supra, we pass the following order.

ORDER

The ruling pronounced by the AAR in Advance Ruling No. 125/AAR/2023 dated 20.12.2023 stands modified to the extent discussed in para 6 above.