

TAX INFO

Dated 10/08/2022

Latest update on GST Law: **Place of Supply in case the passenger is not registered under GST and avails transportation service would be the place where the passenger starts his journey as given in judgement by Telangana High Court.**

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Name of Petitioner	Ani technologies Private Limited
Name of Respondent	State of Telangana
Court	Telangana High Court
Date of Judgement	16.06.2022
Appeal No.	WRIT PETITION No.25526 of 2022

Brief Facts of the Case Law:

Petitioner under the trade name 'Ola' is engaged in the business of providing internet platform/mobile application services where the driver partners provide passenger transportation services to the customers. The petitioner per se is not engaged in providing passenger transportation service. It is only providing an electronic platform to the driver partners and to the customers. It is having its registered office at Bengaluru though it has its business presence in various States including the State of Telangana. For transportation services rendered by the drivers outside the State of Telangana, it has been charged IGST which it has paid. A notice for short payment of tax dated 02.03.2020 was issued to the petitioner as the supplier of service and place of supply were found to be located in the State of Telangana. Therefore, a view was taken by the Department that CGST and SGST had to be paid by the petitioner and not IGST. The petitioner submitted a detailed reply on 19.03.2020 pointing out that petitioner had rightly paid IGST for the audit period from April, 2019 to March, 2020 and was not required to pay CGST and SGST. The impugned order dated 04.02.2022 was issued and the explanation furnished by the petitioner was not accepted. Since the dealer (petitioner) by not paying CGST and SGST has committed an offence thereunder, penalty proceedings have been initiated.

Contention of the Petitioner:

Section 12(9) of the IGST Act says that the place of supply of passenger transportation service to a registered person shall be the location of such person and if it is to a person other than a registered person, it shall be the place where the passenger embarks on the conveyance for a continuous journey.

Contention of the Department:

The petitioner should pay the demand under CGST and SGST heads and claim refund of IGST. Alternatively, he can file appeal.

Decision of the Court:

It is prima facie evident that if the passenger is not registered under GST and avails transportation service by way of legal fiction the place of supply would be the place where the passenger embarks or starts his journey. Though the Department has referred to provisions of Section 12(9) of the IGST Act, but has however erroneously recorded that in case of unregistered recipient, the place of supply shall be the location of such recipient, which prima facie appears to be in contravention of Section 12(9) of the IGST Act. Thereafter, The Department levied the tax as noted above and issued notice for payment. The contentions raised by the petitioner, more particularly the requirement to pay IGST under Section 12(9) of IGST Act and correspondingly the non-liability to pay CGST and SGST insofar the transportation services rendered by the drivers were not considered in the right perspective. That apart though the impugned order is a lengthy one, the substantive portion appears to be without due application of mind to the legal provision.

Accordingly, the order dated 04.02.2022 was set aside and the matter was remanded back to the Department for a fresh decision in accordance with law after giving notice of hearing as well as opportunity of hearing to the petitioner.

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