

**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. A.K.JYOTISHI, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR/04/2018-19

DATE:04/12/2018

Name and address of the appellant	M/s. OPTA Cabs Private Limited, Chitkala, No.216, 6 th Main, Nrupathunganagar J.P.Nagar, 7 th Phase, Bengaluru-560076
GSTIN or User ID	29AACCO5970E1Z9
Advance Ruling Order against which appeal is filed	KAR/ADRG 14/2018 Dated: 27 th July 2018
Date of filing appeal	07-09-2018
Represented by	Sri Chandrashekar Reddy, Managing Director
Jurisdictional Authority- Centre	RANGE-CSD4
Jurisdictional Authority- State	LGSTO-025A Bengaluru
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs.20,000/- made vide Challan No. SBIN 18092900029683, Dated. 06-09- 2018

PROCEEDINGS

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

At the outset we would like to make it clear that the provisions of both CGST, Act 2017 and SGST, Act 2017 are in *pari material* 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.

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. OPTA Cabs Private Limited, (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 14/2018 Dated: 27th July 2018.

Brief Facts of the case:

1. M/s. OPTA Cabs Pvt. Ltd. is engaged in business of taxi aggregation service wherein it provides the IT platform including Mobile App and website both to the customers and taxi drivers to integrate both of them on a single platform. For the usage of this facility the appellant is collecting monthly usage charges from the taxi drivers and not collecting any amount from the customers.
2. The Appellant submitted that for having used the service of the taxi by the consumer, invoicing is done by the taxi driver directly to customer using the platform of OPTA who provides the service for such platform. The payment for a trip is collected by driver himself directly from the customer on the completion of the trip either through cash or through e-payment.
3. The appellant filed an application for Advance Ruling under section 98 of the CGST Act, 2017 and KGST Act, 2017 on the question as to whether the money paid by the customer directly to the driver of the cab for the service of the trip is liable to GST and whether the applicant is liable to pay GST on this amount.
4. It was decided by the Karnataka Advance Ruling Authority vide Ruling No. KAR/ADRG 14 OF 2018 July 27, 2018 that GST is leviable on the amounts billed by the appellant on behalf of the taxi operators for the services provided in the nature of transportation of passengers through it.

5. Aggrieved by the said Ruling of the Authority (herein after referred to as 'impugned order'), the appellant has filed an appeal under section 100 of the CGST Act, 2017 and KGST Act, 2017 on the following grounds.

i. The Advance Ruling Authority has erred in holding that GST is leviable on the amounts billed by the appellant on behalf of the taxi operators for the services provided in the nature of transportation of passengers through it and is without consideration of the facts of the case and applicant's interpretation of law.

ii. The Appellant viz. OPTA is providing mobile application to both drivers as well as customers to integrate both of them on a single platform, wherein services are provided by the driver to the customer without any intercession by the appellant viz. OPTA.

iii. OPTA is an IT platform whereby services of information technology are provided to the drivers against a prepaid Monthly subscription. These charges are irrespective of the trips made or income earned by taxi drivers. OPTA has a policy of not charging any trip commission to taxi drivers.

iv. Taxi charges are directly paid by the customer to driver either by way of Cash or E-payment or E-Wallets of driver. The appellant viz. OPTA shall provide a receipt of the total ride fee payable by customer at the end.

v. Section 9(5) of Central Goods and Service Tax Act 2017 states that

"The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax."

vi. Authority for Advance Ruling verified the model of OPTA and held that as per Section 9(5) of the Central Goods and Services Tax Act, 2017 and Notification No.17/2017-Central tax (RATE) dated 28th June 2017 electronic commerce operator shall be liable to pay tax in respect of the services of transportation of passengers by a motor cab or maxi cab or motor cycle or radio taxi, if such services are supplied through it and it shall be deemed that e-commerce operator is the supplier in such case. However, the said ruling is unable to appreciate the words used in section 9(5) "**such services are supplied through it**". Section 9(5) makes it amply clear that the notification would be applicable in the scenario only when "such services are supplied through it" and the provisions of this section would not be applicable in case services are not supplied through it. Hon'ble authority failed to make a distinction between **such services being "supplied" through it as against such services being "booked" through it**. In case of the words "supplied", there has to be a "continuous link" of provision of service from start to end and there should be complete responsibility of the deemed supplier.

vii. OPTA model services of taxi are not supplied through it, due to following reasons:

- There is no privity of contract on account of payment between OPTA and customer. Customers pay directly to taxi drivers; and
 - OPTA does not charge any trip commission from taxi drivers. Thereby there is no flow of consideration on account of any particular trip undertaken by the said taxi driver. OPTA charges monthly rentals to taxi driver for usage of IT platform. The responsibility of OPTA is limited to providing a stable and fully functional IT platform to taxi drivers, and provision of taxi driver services is the sole responsibility of taxi drivers for which no part of income accrues to OPTA.
 - OPTA does not ensure any work to any taxi driver, neither does it offer any incentives for completing particular value of transactions in limited time.
- viii. In view of the above appellant pleaded that the impugned order be set aside.

Personal Hearing

6. The appellant was called for a personal hearing on 25/09/2018 and was represented by the Sri. Chandrashekar Reddy, Managing Director of M/s. OPTA Cabs Private Limited.
7. During the hearing the appellant reiterated the grounds of appeal and also made written submissions wherein they argued that the consideration paid by the customer for the service provided is received by the driver and is not received by the appellant. They drew attention to the words **“such services are supplied through it”** used in section 9(5) of the CGST Act, 2017 and argued that service is also not supplied through it but only booked through it.
8. Appellant pleaded that the service provided by OPTA is limited to IT platform service and is not required to be taxed under section 9(5) of the CGST Act, 2017 and prayed to set aside / modify the impugned advance ruling passed by the authority for advance ruling.

DISCUSSIONS AND FINDINGS

9. We have gone through the records of the case and taken into

account the submissions made by the Appellant in their written submissions as well as at the time of personal hearing. Briefly stated the facts are that the Appellant is in the business of operating taxi aggregation service wherein the Appellant provides an IT platform whereby services of information technology is provided to both the customers and the taxi operators for the usage of service. The business model of the Appellant is that a potential customer would book the taxi by using the IT platform provided by the Appellant and the taxi operator would be intimated about the potential customer through the same IT platform. On completion of the journey, the Appellant sends an invoice to the customer using the IT platform and the charges for the taxi ride are paid by the customer directly to the taxi driver by way of cash, mobile wallets or online payment. The Appellant does not charge any commission from the taxi driver for the trip. For providing this digital platform, the Appellant collects a prepaid monthly subscription from the taxi operators to whom the IT service is provided. On this subscription amount GST is paid by the Appellant and there is no dispute on this.

10. In this factual background, the short point for determination is whether the Appellant is an e-commerce operator and if so whether he is liable to pay tax on the service supplied through it in terms of Section 9(5) of the CGST Act. To examine this question, let us first look at what constitutes "e-commerce" and who is an "e-commerce operator" as per the CGST Act.

As per Section 2(44) of the CGST Act, 2017, **electronic Commerce** means the supply of goods or services or both, including digital products over digital or electronic network.

As per Section 2(45) of the CGST Act, 2017, **electronic Commerce operator** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

In the instant case the transportation of passenger service is provided by the taxi drivers by using a software application. Transportation of passengers is a taxable service liable to GST. The provision of this service by the taxi driver to the passenger is a 'supply' within the scope of supply given in Section 7 of the CGST Act since the service is provided for a consideration. The Appellant on the other hand has developed a digital platform

which aggregates the taxi drivers on one common platform. The service of transportation of passengers is supplied by the taxi drivers using the digital application developed by the Appellant. The Appellant manages the digital application which facilitates the supply of the service of transportation of passengers.

11. Further, the appellant owns and operates the IT platform for the supply of service of transportation of passengers over the digital network. Using this digital network facility the Appellant provides the taxi aggregation service wherein they connect both the customer as well as the taxi operator. The customer would book the taxi by using the IT platform provided by the Appellant and the taxi operator would be intimated about the potential customer through the same IT platform. Finally on completion of the service Appellant sends an invoice to the customer through the digital network facility which is payable by the consumer to the taxi driver. Therefore the appellant M/s. OPTA Cabs Pvt Ltd is an "electronic commerce operator" in terms of the definition given in Section 2(45) of the CGST Act.

12. Sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 further states as under :

"(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such service."

13. Under the provisions of sub-section (5) of section 9 of the CGST Act and Notification No.17/2017 – Central Tax (Rate) dated 28th June, 2017 was issued whereby, the services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle was notified as the category of services, the tax on intra-State supplies of which shall be paid by the electronic commerce operator.

14. Section 9(5) of the CGST Act shifts the liability to pay the tax from the actual supplier of the notified services to the e-commerce operator. The provisions of Section 9(5) of the CGST Act do not in any way imply that the supplier of the service is the e-commerce operator. Only the liability to pay the tax is now cast upon the e-commerce operator. The supply of the service of transportation of passengers continues to be the taxi operators. However, since the service is supplied by them through the e-commerce platform, the liability to pay the tax is cast upon the e-commerce operator by virtue of Notification No 17/2017 CT(R) dt 28.06.2017. The Appellant in his arguments has greatly stressed upon the fact that the service is merely 'booked' through his digital platform and not supplied through it. This is a feeble attempt at circumventing the provisions of law. A booking for a taxi ride done on the Appellant's digital application is the first step towards the supply of the service. Without the booking which is done on the digital application, no service can be provided by the taxi operator. The nature of e-commerce activity is such that the supply of goods or service or both happens through the electronic mode. In this case, booking for a taxi ride on the digital application is a part of the activity of the supply of the service of transportation of passengers. Without the booking no service can be supplied. Every supply begins with a request for the supply. The request can be in the form of a written request like a purchase order, a verbal request or a request made on the digital application which is in the nature of 'booking'. Honouring such requests by the supplier of the goods or services, in return for a consideration, is the taxable event of 'supply'. Therefore, booking for a service is also an integral part of the supply chain and hence there is no merit in the argument of the Appellant that the service has merely been 'booked' on their platform and not 'supplied through it'. We reiterate here that the supply of the service of transportation of passengers has been provided 'through' the digital platform and by virtue of the provisions of Section 9(5) of the CGST Act, the e-commerce operator (the one who manages and operates the digital platform) is the person who is liable to pay the tax on all intra-state supplies as if he is the supplier.

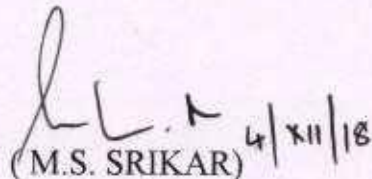
15. The electronic commerce operator shall be liable to pay tax on the services provided by a motor cab or maxi cab or motor cycle or radio-taxi, by way of transportation of passengers, if such services are supplied through it and it shall be deemed that the electronic commerce operator is the supplier in such cases.
16. The argument of the Appellant that the taxi services are merely booked through it and not supplied through it is not a tenable argument. Further, the fact that the ecommerce operator is not receiving the amount from the customer is also not a valid consideration since as already stated above, the e-commerce operator is deemed to have supplied the service in terms of Section 9 (5) read with the notification above. It is not relevant whether the consideration is paid to the e-commerce operator or to the service provider as far as the liability under section 9(5) of the CGST Act, 2017 and SGST Act,2017 readwith Notification No. 17/2017- Central tax (Rate) Dated 28/06/2017 is concerned.

In view of the above, the services of transportation of passengers supplied through the Appellant's electronic platform and digital network would be liable to tax at the hands of the Appellant.

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

ORDER

We uphold the order NO.KAR ADRG 14/2018 dated 27/07/2018 passed by the Advance Ruling Authority and appeal filed by the appellant M/s. OPTA Cabs Private Limited, stands dismissed on all accounts.


(M.S. SRIKAR) 4/11/18

Member
Karnataka Appellate Authority
For Advance Ruling


(A.K. JYOTISHI)

Member
Karnataka Appellate Authority
For Advance Ruling