



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Commissioner of State Tax (Member)
2. Sri. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

AAR No.25/AP/GST/2021 dated:20.07.2021

1	Name and address of the applicant	M/s.Andhra Pradesh State Road Transport Corporation, Pandit Nehru Bus Station, RTC House, 1 st Floor, Bhaskar Rao Pet, Vijayawada-520001, Andhra Pradesh.
2	GSTIN	37AAGFA3527J2ZF
3	Date of filing of Form GST ARA-01	26.06.2021
4	Personal Hearing	29.06.2021
5	Represented by	CA SivaPrasad. A
6	Jurisdictional Authority – State	Assistant Commissioner (ST) Krishnalanka Circle, Vijayawada-II Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act. e) Determination of the liability to pay tax on any goods or services or both.

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax 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 pari materia 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 APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Andhra Pradesh State Road Transport Corporation(hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

- 3.1.** The applicant, Andhra Pradesh State Road Transport Corporation (APSRTC) was established on 11th January, 1958 as per The Road Transport Act, 1950 by G.O Ms No.36, Home (Transport – IV) dated 06-01-1958. As a consequence of bifurcation of the erstwhile United State of Andhra Pradesh into Telangana and Andhra Pradesh, APSTRC (erstwhile) was bifurcated into TSRTC and APSRTC, with some issues still pending regarding the division of assets and liabilities between the two corporations.
- 3.2.** APSRTC, though operating under the Public Transport Department (PTD) of Government of Andhra Pradesh, is completely an independent entity with operational autonomy and operates as an independent corporation with its own sources and application of funds. The Central Government owns a stake of 31% with Rs.35.62 Crores as capital contribution and the State Government of Andhra Pradesh (GOAP) owns the balance stake of 69% with a capital contribution of Rs.79.53 Crores.
- 3.3** Of late, the Government of Andhra Pradesh vide GO MS NO 50 dt 30-12-2019, had taken up the process of merger of establishment of APSRTC with the State Government and created the "Public Transport Department" under the administrative control of "Transport Roads and Buildings Department" and declared the 'Public Transport Department' as 'Head of the Department' to exercise financial powers. Consequently, vide GO MS NO 51, dt 31-12-2019 the employees of APSRTC were absorbed into Government Payroll.
- 3.4** Subsequently, the State Government decided to take all the buses, establishment and infrastructure on lease so that the total public transport can be undertaken by Government of Andhra Pradesh directly, through the Department of PTD.
- With the above backdrop, the applicant approached the Authority for Advance Ruling seeking clarification on the following issue.

4. Questions raised before the authority:

Whether the transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No: 12/2017 Central Tax (Rate).

On verification of basic information of the applicant, it is observed that the applicant is under State jurisdiction, i.e. Assistant Commissioner (ST), Krishnalanka Circle, Vijayawada-II Division. Accordingly, the application has been forwarded to the jurisdictional officer with a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

No remarks were received from the jurisdictional officers concerned on the issue.

5. Applicant's Interpretation of Law:

- 5.1** The applicant submits that in the process of merger, all the buses run by APSRTC are proposed to be given on hire basis to PTD department of State Government of Andhra Pradesh. Thus, all the buses owned by and belonging to APSRTC are going to be taken up by PTD on lease. Similarly, all the private buses taken on hire by APSRTC will also be hired out to PTD directly by the owner of the buses. There is no

material difference in the contract except for the fact that instead of APSRTC, the buses are being taken on lease by the AP State Government Directly.

- 5.2** The applicant states that under GST (even under the erstwhile service tax), the service of transport is taxed at a concessional rate. The applicable rate of GST at present is 5% with the stipulation that there shall be no Input Tax credit. Hence any tax that the transport undertaking shall pay on the inward supplies is not eligible as input tax credit and it will eventually add up to the cost of service. Therefore, as per the understanding of the applicant, the following entry had been contemplated and provided in the tariff. Thus, the entry of exemption is meant to provide relief to the cost of transport.
- 5.3** As per Entry No 22 of Notification 12/2017 Central Tax (Rate)- SAC 9966 or 9973, service by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers is exempt from Tax. In accordance with that entry, at present the private players are providing their buses on lease to APSRTC and the same was eligible for exemption.
- 5.4** The applicant claims that the intention of the above entry is only to provide exemption to public transport. It is further remarked that, if the benefit of exemption is provided to a state-run Transport undertaking, then why not the same is provided to the State Government itself.
- 5.5** The applicant further submits that it was the customary practice in our country that every State Government had created a separate corporation (normally named as {State Name} Road Transport Corporation). Therefore, the entry might have been drafted in the present style having regard to the practice in the country. However due to change in the policy, the AP Government had decided to merge the Corporation back into the State Government. Hence, there is no change in the
- i. Nature of activity being undertaken
 - ii. The beneficiaries
 - iii. The controlling interest is with the state only in the past as well as now.

Therefore, it may be noted that it is only a change in the organizational structure but not a change in any functional arrangement. There could not be any conceivable possible reason to allow the benefit to a Corporation formed by State Government but deny the same if the same is undertaken by State itself.

- 5.6** Considering the above, it is abundantly clear that the exemption is available to any case of leasing of a motor vehicle, if the two important conditions, that it shall be for transport of 12 or more passengers and such activity is undertaken by the State, are satisfied.

Hence in the considered view of the applicant, the exemption of hiring of buses is applicable even if the State Government undertakes the transport directly and there is no condition contemplated that the transport shall only by means of an independent corporation.

6. Personal Hearing:

The authorized representative, CA Sivaprasad A, attended the Personal Hearing conducted on 29th June, 2021 and made the following additional submissions.

Additional Submissions:

- 6.1** As per Entry No 22 of Notification 12/2017 Central Tax (Rate)– SAC 9966 or 9973, service by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers is exempt from Tax

As per definition 2(zzk) of notification No. 12/2017 "state transport undertaking" has the same meaning as assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

- 6.2** Section 2(42) of Motor Vehicles Act, 1988 defines State Transport undertaking. "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);
- (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;
- [(iv) ZillaParishad or any other similar local authority]

Explanation:- For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

- 6.3** From the above definition it is clear that the "State Transport undertaking" need not be confined to Road Transport corporations as it is only one of the alternatives provided in the definition. The definition also extends to

- i. Transport carried by Central Government or Sate government as per clause (i) of the said definition
- ii. even by municipalities – as per clause (iii) of the said definition.
- iii. Even by any other companies owned or controlled by Central or State Government – not being the Road Transport Corporation set up under (iii) above.
- iv. Even by Zillaparishads or other similar local authorities.

- 6.4** The applicant submits that the intention of the above entry is only to provide exemption to state-run public transport. He further opines that if the benefit of exemption is provided to a state-run Transport undertaking then why not the same exemption is applicable, if it is provided to the State Government itself.

6.5 The applicant claims that basing on the above definition, if the 'undertaking' is carried by the Central Government or State Government itself, it squarely fits into the definition of State transport undertaking as per the clause (i) of definition 2(42) of Motor vehicle Act, which is the definition referred by the Notification 12/2017 itself.

6.6 Hence it is very clear that PTD, which is a department under State Government is also an 'undertaking' and it satisfies the definition of State Transport undertaking as per the definition of section 2(42) of Motor vehicles act and consequently is also eligible for the exemption provided under Notification 12/2017 Central Tax (Rate).

6.7 Considering the above, it is abundantly clear that the exemption is available to any case of leasing of a motor vehicle if the two important conditions that it

- a. shall be for transport of 12 or more passengers and
- b. such activity is undertaken by the State

are satisfied. Hence in the considered view of the applicant, the exemption of hiring of buses is applicable even if the State Government undertakes the transport directly and there is no condition contemplated that the transport shall only by means of an independent corporation.

7. Discussion and Findings:

We have examined the issues raised in the application. The taxability of the services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined to decide the question involved in the present Ruling.

7.1 The applicant approached this authority for the classification and taxability of the services rendered by the APSRTC i.e., Whether the transaction of hiring/leasing of buses by the APSRTC to the Public Transport Department (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate) or not.

7.2 Now we examine the contention of the applicant whether these hire services be classified under the said exemption entry as reproduced here.

Sl. No. 22 of Exemption Notification No. 12/2017-Central Tax (Rate)

1. Exemption Entry

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
22	Heading 9966 or Heading 9973	Services by way of giving on hire – (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transport of goods.	Nil	Nil

The above Exemption entry comes with the following qualifiers,

- a) A motor vehicle meant to carry more than twelve passengers is to be hired and
- b) The services are to be supplied to a State Transport Undertaking.

7.3 As the 1st condition is explicitly meted out in the instant case, now we examine whether the Department of Public Transport would come under 'State Transport Undertaking'.

As the GST Act is silent on the definition of the 'State Transport Undertaking', recourse has been taken to the Motor Vehicles Act.

As per "Section 2(42) of Motor Vehicles Act, 1988,

"State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);
- (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;
- (iv) Zilla Parishad or any other similar local authority"

Even the Motor Vehicles Act is silent on what an 'Undertaking' is. It has qualified the word 'Undertaking' with the conditionalities that it should be carried on by Central Government or State Government etc., as listed above under Section 2(42) (i), (ii), (iii) and (iv).

Now we look into the status of the 'Public Transport Department', whether it is a 'State Transport Undertaking'.

The meaning of this term "Undertaking" varies depending on the context in which it is used.

For the purposes of the Companies Act 2006, it means either:

- A body corporate or partnership; or
- An unincorporated association carrying on a trade or business, with or without a view to profit (section 1161, Companies Act, 2006).

In the instant case, it is clear that the Government of Andhra Pradesh had created a separate undertaking under the name and style of 'Public Transport Department' (PTD) which will operate under the Administrative control of Transport, Road and Buildings Department.

Thus, the 'Department of Public Transport' fits into the above definition of 'Undertaking', meant for 'Transport' carried by the State Government.

7.4 With the foregoing, we concur with the premise of the applicant that 'the hire services provided by APSRTC to the 'Public Transport Department' can be considered as services by way of giving on hire to a State Transport undertaking' and is eligible for exemption by way of Sl. No. 22 of Exemption Notification No. 12/2017-Central Tax (Rate).

In view of the above, we rule as here under.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether the transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate).

Answer: Affirmative.

Sd/-D. Ramesh
Member



//t.c.f.b.o//

Sd/- A. Syam Sundar
Member

Deputy Commissioner (ST),
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To

1. M/s. Andhra Pradesh State Road Transport Corporation, Pandit Nehru Bus Station, RTC House, 1st Floor, Bhaskar Rao Pet, Vijayawada- 520001, Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Krishnalanka Circle, Vijayawada-II Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Nidadavole Range, Eluru Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Principal Chief Commissioner of Customs & Central Tax, O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.