

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 58/ 2019

Dated: 19th September, 2019

Present:

1. Sri. Harish Dharnia,
Addl. Commissioner of Central Tax Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Humble Mobile Solutions Pvt. Ltd., No. 112/2, 17 th Main, KHB Colony, 5 th Block, Koramangala, Bengaluru 560095
2.	GSTIN or User ID	29AADCH6500J1ZK
3.	Date of filing of Form GST ARA-01	09.08.2018
4.	Represented by	Sri Badarinath.N.R., Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bengaluru- South
6.	Jurisdictional Authority - State	LGSTO-015A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN HDFC18072900472338 dated 31.07.2018 2. Rs.5,000-00 under KGST Act vide CIN HDFC18072900457992 dated 28.07.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Humble Mobile Solutions Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AADCH6500J1ZK, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether the applicant is liable to pay tax for supply of services by another person through the e-commerce platform operated by the applicant?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that he operates a technology based electronic platform service called "DriveU" which seeks to provide drivers on demand to customers who wish to obtain the services of a driver.
- b. The drivers offering their services on the DriveU platform are individuals and independent service providers who have opted to enlist themselves with DriveU. The drivers are screened and trained prior to being listed as a driver on the DriveU platform. At no point can the driver represent himself to be an employee of Humble Mobile Solutions Private Limited / DriveU. The user terms and conditions hosted on DriveU website expressly provide that the drivers are independent service providers and are not employees of the applicant.
- c. Further, the applicant states that DriveU, in itself does not provide driving or transportation services. The customer offers the mode of transportation. The terms and conditions clearly state that the provision of services by the driver to the customer is, subject to the agreement entered into between them and the applicant shall under no circumstances be party to such agreement. The extract of Para II of the User terms and conditions, as hosted on the applicant's website, is reproduced by the applicant as the same reads as follows:

"DriveU itself does not provide transportation services. It is upto the User to offer transportation. DriveU only acts as intermediary between the Driver and you. The provision of the Services by the Driver to you is, therefore, subject to the agreement (to be) entered into between the Driver and you. DriveU shall under no circumstance be a party to such agreement. DriveU disclaims any and all liability in respect of the Drivers including any claim of employment or any vicarious liability arising out of the Service or otherwise."

4. The applicant elaborates the modus operandi is as follows:

- a. DriveU aims at bringing drivers/ operators (service providers) and customers owning private cars on a common platform by which the said customers can place a request for the services of a professional driver for commute.

- b. The e-commerce platform brings the customer into contact with a driver so as to avail the latter's services, subject to the availability of drivers in or around the customer's location at the time of registering his request.
- c. The request by the customer could be for a point-to-point commute or a round trip, is place by the customer electronically over a mobile based app or through an online website operated by the applicant.
- d. Towards the end of the commute, the customers are charged for the services of the driver, which is intimated to them over the app or mail. The services may be paid for by the customers either:
 - In cash, directly to the driver, or
 - Through online payment options, to the applicant
- e. Where the customer opts to pay for the drivers' services through any of the online modes available on the app, the applicant remits the proceeds collected from the customers to the respective drivers subject to deduction of TDS under section 194C of the Income-tax Act, 1961.
- f. In return for the use of the applicant's electronic platform, the Drivers are charged a convenience fee by the applicant including GST. The applicant remits the said tax to the credit of the respective Governments and regularly files periodic returns as prescribed under the GST Laws.

5. Regarding the question whether the applicant is liable to pay tax for supply of services by another person through e-commerce platform operated by the applicant, the applicant states as under:

- a. Electronic Commerce has been defined to mean the supply of goods or services or both, including digital products over digital or electronic network.
- b. An Electronic Commerce Operator has been defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- c. The Government vide Section 9(5) of the CGST Act, 2017 is empowered to notify, specific categories of services, the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and the electronic commerce operator shall for all intents and purposes be deemed to be the supplier liable for paying the tax in relation to the supply of such services. All the provisions of the GST Law would then apply to the electronic commerce operator since the electronic commerce operator is deemed to be the supplier of service. However, as on date of this application, only three services have been notified by way of Notification No.17/2017-Central Tax (Rate).
- d. The following are the categories of services notified under Section 9(5) of the CGST Act, 2017 in respect of which the electronic commerce operator would be liable to pay tax:
 - a. Services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle.
 - b. Accommodation services in hotels or commercial places meant for lodging purposes, except where the person supplying such service through the



electronic commerce operator is liable for registration on account of having aggregate turnover in excess of Rs.20 Lakhs (Rs.10 Lakhs in case of special category States)

- c. House keeping services, such as plumbing, carpentering, etc. except where the person supplying such service through the electronic commerce operator is liable for registration on account of having aggregate turnover in excess of Rs.20 Lakhs (Rs.10 Lakhs in case of special category States)
- d. Section 52 of the CGST Act, 2017 provides for collection of tax at source which mandates every electronic commerce operator, not being an agent, to collect an amount calculated at a rate to be notified (but not exceeding 1%) on the net value of taxable supplies made through it by other suppliers where the consideration in respect to such supplies is to be collected by such electronic commerce operator.
- e. In light of the statutory provisions referred to above, for the purpose of GST, electronic commerce operators may be broadly classified into four categories
 - a. A registered person owning a website or any other digital platform of their own to which no other third party supplier has access
 - b. An electronic commerce operator operating a digital platform through which services specified under section 9(5) of the CGST Act are supplied by third party suppliers
 - c. An electronic commerce operator operating a digital platform through which goods and services (other than those services specified under Section 9(5) of the CGST Act) are supplied by third parties and the consideration for which is collected by the electronic commerce operator on behalf of the third party supplier.
 - d. An electronic commerce operator operating a digital platform through which goods and services (other than those services specified under section 9(5) of the CGST Act) are supplied by third party suppliers and the consideration for which is directly collected by the third party supplier.
- f. The applicant's business model is as under:
The applicant's business model can be summarized as under:
 - a. Provides a platform by which third party service providers are allowed to enlist themselves as drivers on its platform
 - b. The services provided by the drivers is not a category of service which has been notified under section 9(5) of the CGST Act, 2017 read with Notification No.17/2017 – Central Tax (Rate)
 - c. Consideration for services provided to customers is
 - i. Collected by the applicant on behalf of third party service providers (i.e. drivers) through online payment options
 - ii. Paid directly to the drivers

In view of the above, the applicant submits that he, as an electronic commerce operator may be classified under category (c) or (d) of para 5(f) above.

6. Regarding the GST treatment for supplies falling under Category (c) of para 5(f) above, the applicant submits as under:

- a. The GST Law prescribes a mechanism for tax collection at source. It may be noted that the effective date for provisions relating to TDS have not been notified; consequently, the same are not applicable as on the date of this application for Advance Ruling. However, for a comprehensive understanding of the GST implications, the same have been dealt with, in this application. Section 52 of the CGST Act, 2017 provides for the conditions on the fulfilment of which an electronic commerce operator will be required to collect tax at source. The provisions of TCS would be triggered in the event of the following:
- Supply of goods or services or both must be effected by a third party supplier through an electronic commerce operator
 - The electronic commerce operator is not an agent of such third party supplier
 - The third party supplier is a registered person
 - The supply effected by the third party supplier must be a taxable supply, i.e. liable to GST
 - The services supplied through the e-commerce operator shall not be a service specified under section 9(5) of the CGST Act, 2017 read with Notification No.17/2017-Central Tax (Rate)
 - The consideration in respect of such supplies is collected by the electronic commerce operator on behalf of the third party supplier.
- b. The electronic commerce operator shall collect tax at source at a rate not exceeding 1% (as may be notified) of the net value of taxable supplies. Net value of supplies may be understood as the aggregate value of all the taxable supplies effected through the e-commerce operator during the month as reduced by the aggregate value of rejections/ supply returns in the same month.
- c. Aggregate value of supplies classified under section 9(5) of the CGST Act, 2017 shall not be included in ascertaining the net value of taxable supplies since the same would be liable to tax in the hands of the electronic commerce operator as discussed above.
- d. The electronic commerce operator collecting tax at source would be required to file a statement in FORM GSTR-8 furnishing details of tax collected at source.
- e. The Tax collected at Source would be eligible as credit to the third party supplier in his electronic credit ledger. Such credit may be utilized by the third party supplier to discharge his output tax liability on taxable supplies effected by him. It is important to note that collection of tax at source by the electronic commerce operator does not absolve the third party supplier of his liability to pay tax on his outward supplies.

- f. Regarding the impact of the above on the applicant, the applicant states that in the instant case, all the conditions of para 6a would be applicable and as a result of which, the applicant would be required to effect TCS on the value of service collected by it from passengers on behalf of the third party service providers (i.e. drivers). It must be noted that any amount paid by the customers directly to the drivers would not attract the provisions of TCS. The onus for discharge of tax liability on the services provided by the drivers to the customers rests solely on such drivers. The drivers will be responsible for filing periodic returns and remitting taxes after setting off TCS credit available in the electronic credit ledger.
7. Regarding the GST treatment for supplies falling under Category (d) of para 5(f) above, the applicant submits as under:
- a. This transaction, though similar to Category c, differs on the grounds that the consideration for the supply of service by the third party service provider is not collected by the electronic commerce operator through whom the services have been supplied.
- b. As explained earlier, the provisions of TCS would be triggered in the event of the following:
- Supply of goods or services or both must be effected by a third party supplier through an electronic commerce operator
 - The electronic commerce operator is not an agent of such third party supplier
 - The third party supplier is a registered person
 - The supply effected by the third party supplier must be a taxable supply i.e. liable to GST
 - The services supplied through the electronic commerce operator shall not be a service specified under section 9(5) of the CGST Act, 2017 read with Notification No.17/2017 – Central Tax (Rate)
 - The consideration in respect of such supplies is collected by the electronic commerce operator on behalf of the third party supplier.
- c. Regarding the impact on the applicant, the applicant states that since the consideration in this instance, is directly received by the third party service provider, the provisions relating to collection of tax at source under section 52 of the CGST Act, 2017 would not be applicable. Thus, the onus of discharging tax falls entirely on such third party service provider (i.e. drivers) towards services rendered by them through the electronic commerce operator.
8. Having considered the various scenarios applicable to the applicant's business, as discussed supra, the applicant is of the view that service rendered by third party service providers (i.e. drivers) through the electronic platform operated by the applicant does not fall within the ambit of any of the services listed in Notification No.17/2017 – Central Tax (Rate). Consequently, the provisions of section 9(5) of the CGST Act, 2017 would not apply to the applicant. Thus, the applicant would not be

liable to pay GST on services supplied through it by third party service providers (i.e. drivers). Further, in view of the fact that TCS provisions have not been notified as yet, the applicant would not be liable to collect tax at source from the third party service providers.

9. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the assertions made by Sri. Badrinath, CA, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

9.1 The activity of supply of the applicant is examined and it is seen that there are three supplies involved in the entire transactions – first supply is providing drivers to the consumers, second supply is that of e-commerce services to the drivers and the third supply is the provision of manpower service by the drivers to the consumers.

9.2 Regarding the first supply, i.e. providing drivers to the consumers, the applicant is only acting as an intermediary through the e-commerce platform, wherein the consumers who are in need of drivers would log in to the portal and select the driver. The drivers are listed in the e-commerce platform and the contract is between the drivers and the consumers, with the applicant acting as a facilitator. In some cases, the consideration for this service is received by the applicant on behalf of the drivers and the same would be paid to the drivers. Hence the applicant is not providing drivers to the consumers but only facilitating the consumers and drivers to come together for provision of service.

9.3 Regarding the second supply, the supplier of services is the e-commerce platform service provider i.e. the applicant in the instant case and the recipient of the supply of service is the driver as he is the person liable to pay the consideration. The applicant is collecting service charges for the usage of electronic commerce platform like listing services, payment collection etc. and the applicant has admitted GST liability on the above service charges collected and declaring the same in the returns. This turnover is not subject matter of this application for advance ruling and hence not considered.

9.3 Regarding the third service, it is found that the applicant is operating an electronic commerce platform and is providing a platform for the obtaining the services of drivers by the consumers. The drivers are not employees of the applicant and are independent persons who provide the services to the



consumers and the consumers are liable to pay the consideration for the services to the drivers. Further, as observed from the submissions of the applicant, the consumers have the option either to pay the consideration directly to the driver or make payment electronically to the applicant and the applicant makes the payment so collected to the drivers. The drivers, being independent persons, have the option to enter into the contract and the customers have the choice of the drivers, hence they act on principal to principal basis and the applicant is only a facilitator for the supply of the services by the drivers to the customers and is charging a fee for the services provided from the drivers. The drivers are the suppliers of services which are separate supplies and the treatment of the taxability of this transaction is not a subject matter of the advance ruling. However, it is pertinent to note that section 9(5) of the CGST Act 2017 does not shift the liability of these services provided by the drivers from the drivers themselves to the e-commerce operator.

9.4 Regarding the taxability of the services supplied by the drivers to the consumers, the following observations are made:

(a) Section 9(5) of the CGST Act, 2017 reads 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 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:"

By virtue of this sub-section, the liability for payment of tax in relation to intra-State supplies of notified services supplied through an e-commerce operator would be on the e-commerce operator and not on the actual supplier.

(b) Notification No. 17/2017- Central Tax dated 28.06.2017 (as amended from time to time) notifies the following services as notified services under section 9(5) of the CGST Act:

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

- (c) It is very clear that the services provided by the drivers through the applicant's portal is not covered under item (ii) and (iii) above. On the issue whether the said services are covered under item (i) or not is decided by analyzing the nature of services supplied.
- (d) The analysis of the services supplied by the individual drivers is analysed and found that the drivers are not employees of the applicant and are also not hired by the applicant. They are only listed on the portal of the applicant and are providing their services on principal-to-principal basis and the consideration for the same is either directly received from the recipients of the service or indirectly through the applicant. Further, the drivers are not supplying the services in their vehicles but are driving the vehicles belonging to the recipients of services and hence are not providing "services of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle" but are providing manpower services namely "driving a motor vehicle services" which is not covered under item (i) of the Notification No.17/2017 – Central Tax dated 28.06.2017.
- (e) In view of the above, the services provided by the drivers are not covered under Notification No.17/2017 – Central Tax dated 28.06.2017 and hence not covered under section 9(5) of the CGST Act and hence the applicant is not liable to tax on the services provided by the drivers.

10. However, on the issue whether the payments collected by the applicant and paid to the drivers are liable to tax collection at source under section 52 of the CGST Act, 2017, the issue is examined and the following are noted:

10.1 Section 52 of the CGST Act, 2017 which is related to Collection of Tax at source reads as under:

"(1) Notwithstanding anything to the contrary contained in this Act, every e-commerce operator (hereinafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator."

10.2 In the above case, to the extent of the consideration collected by the applicant for the services provided by the drivers to the consumers, on behalf of the drivers, the same shall be liable to collection of tax at source under sub-section (1) of section 52 of the CGST Act, 2017. Further, it is pertinent to note that the provisions of section 52 of the CGST Act, 2017 had come into force from 1st October, 2018 by virtue of Notification No.51/2018 – Central Tax dated 13.10.2018. It is also pertinent to note that every person who supplies goods or




services or both (other than those supplies specified under sub-section (5) of section 9), through an e-commerce operator who is required to collect tax at source under section 52 is liable to be registered compulsorily under section 24 of the CGST Act, 2017.

11. In view of the foregoing, we pass the following

R U L I N G

The applicant is not liable to pay tax for the supply of services by drivers through the e-commerce platform operated by the applicant, but he is liable to pay tax on the services provided to the drivers. Further, the applicant is liable to collect tax under section 52 on the net value of taxable supplies made by the drivers through it where the consideration with respect to such supplies is to be collected by the applicant.


(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 19.09.2019
To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Pr. Commissioner of Central Tax, Bangalore-South, Queens Road, CR Building, Bengaluru.
4. The Asst. Commissioner, LGSTO-015A, Bengaluru.
5. Office Folder.