
	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGHCOURT JAIPUR – 302005 (RAJASTHAN)		

ADVANCE RULING NO. RAJ/AAR/2024-25/11

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s RAJASTHAN TOURISM DEVELOPMENT CORPORATION LIMITED, Third Floor, Paryatan Bhawan, Khasha Kothi, Jaipur- 302001, Rajasthan
GSTIN of the applicant	:	08AAACR7643H1Z8
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(e) Determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	15.03.2024
Present for the applicant	:	Mr. Ujjval Sharma C.A., Mr. Rajkumar Sharma (RTDC AAO)
Date of Ruling	:	28.06.2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s RAJASTHAN TOURISM DEVELOPMENT CORPORATION LIMITED, Third Floor, Paryatan Bhawan, Khasha Kothi, Jaipur- 302001, Rajasthan (hereinafter "the applicant") is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) given as under:

(e) Determination of the liability to pay tax on any goods or services or both;

A. SUBMISSION OF THE APPLICANT (in brief):-

M/s Rajasthan Tourism Development Corporation Limited (here in after called as RTDC) is fully owned by Government of Rajasthan had run a Palace on Wheels (here in after called as POW) a luxury tourist train in collaborated with Indian Railways as per agreement dated 23-11-2021.

In the matter, M/s Rajasthan Tourism Development Corporation Limited (hereinafter referred to as "RTDC"), a wholly Rajasthan government-owned entity operating the Palace on Wheels (POW) luxury tourist train in collaboration with Indian Railways, certain complexities have arisen in relation to the Operation and Maintenance Service Agreement with M/s Cube Construction Engg. LTD in Consortium with M/s Easy Toll Solutions Pvt. Ltd (hereinafter collectively referred to as the "Operator"). Pursuant to the said agreement dated 28.06.2023, RTDC, as the grantor, bestowed upon the Operator the exclusive right to operate, maintain, and manage the POW luxury tourist train, including the carriage of tourists on the railway administration rail network, in conformity with the provisions of the Bharat Gaurav Train Policy issued by the railway administration. The relevant portion of the agreement is reproduced here in after.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (in brief)

The applicant has submitted his interpretation and understanding on question raised. The key points of the agreement and scope of works are summarized as under:

1) Role of Railway Administration in Operation of the Palace on Wheels (POW). (Point no 3.2.1 agreement)

"3.2.1 Subject to the provisions contained in the Agreement signed between the RTDC and Railway Administration and in this Agreement, the following services shall be provided by Railway Administration with regards to operation of Palace on Wheels on payment of various charges (RU charges, fixed and variable haulage charges, stabling charges, power car charges, etc.) by the Operator as per BGT Policy and amendments thereof and any other order/ circulars issued by Railway Administration time-to-time for operation of POW:

All the facilities necessary for the operation of the Palace on Wheels (POW) such as use of track, signaling, station premises, locomotives, fueling of cars for operational requirements during run, telecommunication, maintenance staff, access to and from platforms, halts/stabling facilities at stations, watering, and maintenance facilities.

Safety, maintenance, and periodical overhauling of the coaches, including air- conditioners and power cars at a suitable railway workshop at a mutually suitable location on a programmed schedule to be agreed upon with RTDC. Suitable space for stabling of rake, water, Electricity, and workspace for carrying out internal repair will be provided free of charge by the Railway Administration subject to availability.

Any other activity as mentioned in the Agreement signed between the RTDC and the Railway Administration."

2) Booking of Tours on Palace on Wheels (POW)(Point no 7.3 agreement)

"7.3.1 Operator shall be required to book tours/ trips on Palace on Wheels at its own cost & Expenses

7.3.2 Existing bookings of POW with RTDC/its General Sales Agents (GSAs) shall be transferred to the Operator and the Operator shall be liable to accommodate such booking starting from the first trip/ tour of POW after signing of Agreement between the parties.

7.3.3 Operator shall develop website/ mobile app for online booking of tours. All tours shall be booked online only. Authority shall be given access to website/ mobile app to view the bookings, cancelled bookings, guests travelled on the train, guest details, etc. Operator, upon expiry/prior termination of the Agreement, shall handover the POW booking portal and its title/ownership to RTDC without any fee/charges.

7.3.4 Website/mobile app for POW shall be allowed to set-up a link on RTDC portal through which user can navigate to the separate POW website (operated & managed by Operator).

7.3.5 Operator shall be responsible for bearing business risk related to booking of tours and subsequent travel on POW. Authority shall not be responsible for ensuring the minimum number guaranteed guests on POW."

3) OBLIGATIONS OF THE RAILWAY ADMINISTRATION/RAILWAY ADMINISTRATION (Point no 8 agreement)

8. Obligations of the Railway Administration/Railway Administration

"8.1.1 Subject to payment of applicable charges to Railway Administration by the operator in timely manner for operation of the POW, the Railway Administration Shall fulfill its obligations for operation & maintenance of the POW/ as mentioned in the Agreement signed between the RTDC and the Railway Administration."

4) APPLICABLE CHARGES PAYABLE TO THE RAILWAY ADMINISTRATION (Point no 9 agreement)

Composition of Applicable Charges

"9.1.1 The Operator Shall be responsible for payment of all applicable charges (detailed herein below) to the Railway Administration's role (access to rail network, periodic maintenance of coaches, hauling of train, etc.) in running of POW in accordance with agreement signed between the RTDC and Railway Administration (Schedule-3), BGT Policy and amendments thereof. Composition of Applicable Charges to the Railway Administration for operation of the POW under the BGT Policy and amendment thereof is given below:

- Rake Security Deposit
- Right to use charges of POW rake
- Fixed Haulage Charges
- Variable Haulage Charges (Per KM Variable Haulage Charges and Per day Haulage Charges)
- Indian Railways Staff Cost Per Day
- Power car Cost per Day Per Coach
- Stabling Charges
- Station User Fee
- Cancellation Charges

Any other charges as defined in BGT Policy and amendments thereof and/or charges conveyed by Indian Railways for operation of POW.

9.1.3 RTDC shall inform the Operator about the Haulage and other charges as communicated by Railway Administration based on the itinerary as approved by the Railway Administration

9.1.4 Operator (through RTDC) shall pay all applicable charges, RU charges for rakes, power car cost, staff cost, etc.) within the given timeframe as communicated by Indian Railways for operation of POW. For the purpose of payment of applicable charges/fee to Indian Railways. RTDC shall act as the liaison only between the operator and the Indian Railways and overall responsibility of making such payments shall lie to the operator only.

9.2 Non-Payment of Applicable Charges and Consequence (Point no 9.2 agreement)

"9.2.1 Operator shall be solely responsible for making payment of all applicable charges/fee to Railway Administration under the BGT Policy and amendments thereof for operation of the Palace on Wheels (POW). Failure of making such payment within the stipulated timeframe intimated by the Railway Administration shall constitute Event of Default of the Operator and shall entitle the RTDC to recover such payments by revoking the Performance Security which shall be replenished to its original amount within 30 days of such revocation.

9.2.1 In case any penalties/damages/interests are imposed by the Railway Administration on RTDC due to non-payment of the Haulage and other Charges by the Operator, the same shall be recovered from the Operator.

9.2.3 In case the Operator does not clear all outstanding dues to Railway Administration and/or the replenish the Performance Security to its original amount within the stipulated timeframe intimated by the RTDC and/or the Railway Administration then it shall be considered as Event of Default of the Operator and shall entitle the RTDC to initiate termination of the Agreement."

9.3 Statement of Applicable Charges(Point no 9.3 agreement)

9.3.1 A communication received from the Railway Administration with respect to the Applicable Charges for operation & maintenance of the POW under the BGT Policy and amendments thereof is enclosed at Schedule-2.

5)REVENUE SHARE TO RTDC(Point no 10.1.1 agreement)

"10.1.1 In lieu of rights provided for operation of Palace of Wheels (POW), the operator has quoted the (18.5%) of Annual Gross Revenue from POW Operations (not Lesser than 10% of Annual Gross Revenue or Rs 5.00 Crore annually, whichever is higher which is to be paid to the RTDC as Per the payment schedule given subsequently. Revenue Share quoted by the Bidder(s) shall be exclusive of GST, all applicable taxes, duties, cess, surcharges, levies etc. which shall be paid additionally by the Selected Bidder/ Operator to the RTDC."

And the RTDC is paying the applicable Goods and Service tax on the said amount as supply of service under SAC 997311

Further, the Operator was obligated to make payments to the railway administration in accordance with the terms stipulated in their agreement. As per the Point no 9 agreement and the relevant portion of the agreement is re produced here in after

6) As per circular 2021 /tourism/140/03/pt.2 issued by the of the railway also charged Goods and Service tax on the following rate the details is re-produced as under:

Transaction	Taxability	GST Rate	SAC	Entry No.	Document to be issued
Registration fee	Exempt	NA	999799	No.8 of 12/2017	Bill of Supply
Haulage Charge	Taxable under forward charge	5%	996512	No.9 of 11/2017	Tax Invoice
RU Charges	Exempt	NA	997311	No.8 of 12/2017	Bill of Supply
Stabling Charges	Exempt	NA	997311	No.8 of 12/2017	Bill of Supply
User Fee	Taxable under forward charge	5%	996512	No.9 of 11/2017	Tax Invoice

And as per circular dated 2021 /Tourism/140/03 dated 23.11.2021

Type of Transaction2	GST Implication
Registration Fee (Para 3.2 of the Policy) SAC 999799	Non- refundable Registration Fees will be eligible @18%-GST under Reverse Charge Mechanism.
Haulage Charges(Para 8.1 to 8.4 of the Agreement) SAC 996512	Haulage charges are the consideration paid by Service Provide to Indian Railways tor transportation of its rakes/coaches (either rented or owned) and is accordingly, a supply of service by Indian Railways by way of transport of rakes/coaches, etc. Further, vide S.No 9 of the Notification no. 11/2017- Central Tax (Rate) and vide S. No. 5 of the Notification No. 13/2017- Central Tax (Rate), the instant haulage charges shall be liable to GST at the rate of 5% rate under forward charge mechanism
Right to Use (RU) charges (Para 8.5) SAC 997311	As the instant RU charges are payable by Service Provider against having possession of rakes/coaches, such charges are essentially in the nature of leasing of wagons/rental charges and thus, is a supply of services and shall be eligible to GST under reverse charge mechanism i.e., Service Provider shall be liable to discharge GST owing to supplier, namely MoR being Central Government. With respect to the GST rate, vide S. No. 17 of the Notification No. 11/2017- Central Tax (Rate), GST rate as applicable on supply of the rakes/coaches being given (18% GST in case of the supply of Chapter 86 goods) shall be applicable.

Stabling Charges (Para 8.7) SAC 997311	The instant service which is similar to that of RU charges supply i.e., supply of services by way of leasing of wagons/rental charges and thus, is a supply of services and shall be liable to GST under reverse charge mechanism at the GST rate as applicable on supply of rakes/coaches. 18% GST in case of supply of Chapter 86 goods)
User Fee for Redeveloped Stations (Para 8.8) SAC 996512	Such user fee is in the nature of entry fee payable by Service Provider for allowing admission to redeveloped railway station to the tourists boarding/ de-boarding BGT. Since, these are in relation to the transportation services provided by Indian Railways, such user fees are incidental to haulage i.e., transportation services and hence shall qualify as composite supply with supply of haulage services being the principal supply and thus eligible to GST at the rate of 5% under forward charge.
Cancellation Charges (Para 8.9)	Cancellation charges are recovered by Indian Railways when there is cancellation of proposed trip. GST implications on such charges shall be treated within the same category of service against which such amounts are recovered i.e. haulage charges.
Security Deposit(Para 8.10)	Security Deposit when collected by supplier i.e. Indian Railways are not eligible to GST, however when such amounts are adjusted against any of the aforementioned transaction charges, then GST implications on such adjustment shall be same as that of the transaction/supply against which such charges are adjusted.

8) However, a procedural deadlock emerged when the railway administration, in adherence to its established policy, rejected direct payments from the Operator. Therefore, RTDC was required to make payment of all the applicable charges, RU charges for rakes, power car cost, staff cost, etc. within the given timeframe as communicated by Indian Railways for operation of POW. For the purpose of payment of applicable charges/fee to Indian Railways, RTDC shall act as the liaison only between the operator and the Indian Railways and overall responsibility of making such payments shall lie to the operator only and RTDC will not get any profit from the same.

Further RTDC assuming the role of an intermediary to ensure the smooth and compliant financial interaction between the Operator and the railway administration. The act of RTDC making the payment to the railway administration, which was collected from the Operator, underscores the influence exercised by RTDC as a pure agent in the course of these transactions. Further the said transaction of payment was made on the following understanding:

9) **Documentation and Agreement:** RTDC had entered into a clear and comprehensive agreement with operator where in it was provided that:

"Point no 9 Operator (through RTDC) shall pay all applicable charges, RU charges for rakes, power car cost, staff cost, etc.) within the given timeframe as communicated by Indian Railways for operation of POW. For the purpose of payment of applicable charges/fee to Indian Railways. RTDC shall act as the liaison only between the operator and the Indian Railways and overall responsibility of making such payments shall lie to the operator only."

Therefore, RTDC is working as a pure agent, for these expenses which is be incurred by operator.

Separate Disclosure on Invoice: Further, it was proposed that RTDC will clearly indicate the expenses incurred as a pure agent separately on the invoice. The amount paid to the Railway will be shown as reimbursement, and RTDC should not be included in the value of taxable supply.

No Mark-up or Profit or Input Tax credit (ITC): On these Charges RTDC will not make any mark-up or profit and did not take the Input Tax credit (ITC) on the expenses incurred on behalf of the operator therefore reimbursement will be a pass-through without any additional cost.

Actual and Incidental Expenses: The expenses paid to Railway were in the capacity of a pure agent, i.e., further without payment of expenses the POW cannot be operated by the operator.

Documentation and Record-Keeping: The RTDC is maintaining the proper documentation and records of the transactions, including agreements, invoices, and evidence of acting as a pure agent.

The pivotal factor in establishing the applicability of the pure agent concept lies in the tangible influence exerted by RTDC over the financial transaction. The payment to the railway administration, collected from the Operator, was effectuated by RTDC in its role as a pure agent, thereby as per the Rule 33 of the Central Goods and Service Tax Rule 2017 RTDC did not make the payment of the Goods and Service tax neither in forward charge nor reverse charge on the said charges paid to Indian Railways.

In light of these circumstances, RTDC asserts that, in accordance with the provisions of Rule 33, it acted as a pure agent, influencing and facilitating the payment to the railway administration on behalf of the Operator. Consequently, RTDC contends that it should be exempt from the obligation to make payments of Goods and Service Tax on the amount collected from the Operator, given the specific nature of its role as a pure agent in these transactions.

In adherence to their contractual obligations, the Operator, being responsible for the financial aspects of the operation, made the requisite payments to the railway administration as per the terms delineated in their agreement. However, an unforeseen circumstance emerged wherein the railway administration, in adherence to its policy, declined to accept the payments directly from the Operator.

In response to this, and in conformity with Rule 33 of the Central or state Goods and Service Tax Rule 2017, RTDC undertook the role of a "pure agent." In this capacity, RTDC functioned as an intermediary, facilitating the payment process between the Operator and the railway administration. This was not merely a procedural act but a substantive one, whereby RTDC, in its role as a pure agent, influenced the financial transaction.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

- Q1. Whether Goods and Service tax was required to be paid on the charges paid to the Railways on behalf of Operator and those charges were recovered from the Operator?
- Q2. Why not the said charges were come under the scope of the pure agent?
- Q3. If charges paid to the Railways on behalf of Operator were not come under the scope of the pure agent or liable to be tax then what will be the tax Rate?

D. PERSONAL HEARING

In the matter, personal hearing was granted to the applicant on 15.03.2024. Mr. Ujjval Sharma C.A., Mr. Raj Kumar Sharma(RTDC AAO) and Mr. Nitin C.A. Authorized Representative appeared for personal hearing. They reiterated the submission already made by them and stated to submit the agreement of Railway and RTDC within 7 days.

E. COMMENTS OF THE JURISDICTIONAL OFFICER:-

Comments received from the office of the Joint Commissioner, State Tax, Circle-H, Zone-1, Jaipur, Rajasthan vide letter NO. 1156 dated-08.02.2024 are as under: -

Questions and Answers for which present AAR has been filed:-

1. The application for advance ruling has been filed by M/s Rajasthan Tourism Development Corporation Limited seeking advance ruling on the following questions: -
 - i. Whether GST was required to be paid on the charged paid to the Railways on behalf of the operator and those charges were to be recovered from the operator?
 - ii. Why not the said charges come under the scope of pure agent?
 - iii. If charges paid to the Railways on behalf of the operator do not come under the scope of pure agent and liable to be taxed, what will be the rate of tax?
2. In this regard, it is to be noted that M/s Rajasthan Tourism Development Corporation Limited is fully owned by the Government of Rajasthan, holding the GSTN-08AAACR7643H1Z8. RTDC runs the Palace on Wheels, a luxury train in collaboration with Indian Railways.
3. The Palace on Wheels train is a part of the Scheme Bharat Gaurav Trains by the Indian Railways to run theme based train with an aim to tap the vast tourist potential of India. Under this scheme, the registered service providers are offered rakes under 'Right to Use' model by Indian Railways for operation Bharat Gaurav Trains.
4. The scheme of Bharat Gaurav Trains was launched by Indian Railways vide Circular dated 23.11.2021. Since Palace on Wheels has been run by the RTDC since 1982, RTDC was allowed

by Indian Railways vide letter dated 10.05.2022, to continue with the exclusive use of existing rake of POW with payment of applicable charges under the BGT policy.

5. In the matter concerning M/s Rajasthan Tourism Development Corporation Limited has entered into an agreement with M/s Cube Constructions Engg. LTD in relation to the operation maintenance of POW dated 28.06.2023, wherein RTDC as a grantor bestowed upon the operator the exclusive right to operate, maintain and manage the POW luxury tourist train in conformity with the BGT Policy issued by Indian railways.

6. Before coming to the issues over which clarification has been sought by the applicant, it would be noteworthy to peruse Rule 33 of CGST/SGST Act, 2017 wherein provisions in this regard have been provided;

Rule 33. Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration. - Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also

recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

7. A pure agent concept is an important one for businesses as it has direct implications on the value of taxable service. It has direct bearing on the amount of GST charged on a particular supply. It also has bearing on the aggregate turnover of the supplier and therefore on calculating the threshold limit for registration.
8. In the instant matter, the applicant along with his application has submitted the agreement by which RTDC has entered with M/s Cube Constructions Engg. LTD to operate, maintain and manage the POW luxury tourist train. The applicant has also submitted the copy of the letter issued by Indian Railways to RTDC.
9. However, clause (i) of Rule 33 of CGST/SGST Rules, 2017, it is mandatory for the pure agent to get authorized by the recipient by means of a contractual agreement. The applicant has submitted in his application that RTDC has entered in an agreement with M/s Cube Constructions Engg. LTD and in the clauses of the agreement, it is clearly written that the operator (M/s Cube Constructions Engg. LTD) by Indian Railways for operation of POW. For the purpose of payment of applicable charges to Indian Railways, RTDC shall act as the liaison only between the operator and the Indian Railways and overall responsibility of making such payments shall lie to the operator only.
10. However, it is noteworthy that as per clause (i) of Rule 33, the pure agent has to enter into an agreement with the recipient of supply and in the instant matter; the recipient of supply is Indian Railways. The applicant has submitted the copy of the letter vide which the applicable charges for POW under BGT scheme have been clarified by the Indian Railways. But the applicant has failed to submit any agreement which has been entered by RTDC with Indian Railways wherein the latter has authorized the former to incur the expenditure on POW to M/s Cube Constructions Engg. LTD on behalf of Indian Railways.
11. Hence, on the basis of the above mentioned facts, the questions raised by the applicant may be answered as following:

Question 1- Whether GST was required to be paid on the charges paid to the Railways on behalf of the operator and those charges were to be recovered from the operator?

Answer- Yes, GST was required to be paid on the charges paid to the Railways on behalf of the operator.

Question 2- Why not the said charges come under the scope of pure agent?

Answer- On the basis of the discussion held in the above mentioned points, it can be ascertained that RTDC doesn't fulfill the mandatory condition of being a pure agent, which is, getting into an agreement with the recipient of the service. Hence, charges that RTDC pays to Indian Railways on behalf of M/s Cube Constructions Engg. LTD does not come under the scope of pure agent.

Question 3- If charges paid to the Railways on behalf of the operator do not come under the scope of pure agent and liable to be taxed, what will be the rate of tax?

Answer- The rate of GST shall be in accordance with services provided by RTDC to Indian Railways as clarified by Railway Board in its order dated 29.11.2021.

F. FINDINGS, ANALYSIS & CONCLUSION:

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of hearing and the comments of the Jurisdictional Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2) M/s Rajasthan Tourism Development Corporation Limited, fully owned by Government of Rajasthan had run the Palace on Wheels (POW) a luxury tourist train in collaboration with Indian Railways as per Agreement dated 04.10.2022 and Railway Department's circular dated 23.11.2021.

3) It has been decided by ministry of Railway to allow the RTDC to operate Bharat Gaurav Trains (POW, theme base Tourist circuit trains) in terms of Railway Board policy 2021/Tourism/140/03 dated 19/04/2022 (BGT policy) on rail network of Indian Railways solely for tourism purpose.

4) The details of key points of Agreement dated 04.10.2022 entered between Applicant and Indian Railways are as under-

(a)Scope of Agreement:

Subject to the provisions contained in this Agreement, the Railway Administration hereby grants to the Service Provider, throughout the duration of this agreement, a non-exclusive right to use coaches as set forth in Schedule B and require the Railway Administration to haul the Service Provider operated Bharat Gaurav Trains for carrying Tourists on the Rail Network in accordance with provisions of this agreement.

(b)Rights of the Service Provider:

In addition to the right to require Railway Administration to haul the Service Provider operated Bharat Gaurav Trains as described in Article 3 above subject to applicable laws. The rights of the Service Provider shall include the following in accordance with the provisions of this Agreement as mentioned below:-

3.2.1 The right to take physical possession of the Coaches set forth in Schedule B in accordance with terms of this Agreement.

- 3.2.2 The right to undertake the booking of Tourists for the Bharat Gaurav Trains;
- 3.2.3 The right to determine, charge, collect, retain and appropriate the tariff that it charges from the tourists.
- 3.2.4 The right to advertising and branding of the Bharat Gaurav Trains
- 3.2.5 The right to decide the business model including themes, route, itinerary and other attributes connected with this model subject to operational feasibility to be determined by the Railway Administration.
- 3.2.6 The right to obtain access to Stations as per Approved Itinerary for boarding and alighting of the Tourist.

(c)Bharat Gaurav Trains Operations and Maintenance:

6. Operations/ Maintenance

6.1.1 The Service Provider operate Bharat Gaurav Trains will be uniquely numbered and operated according to the time-table defined in the itinerary and approved by Zonal Railways. The Bharat Gaurav Trains will be at par with the mail/exp trains of Indian Railways for the purpose of train operations and punctuality. Accordingly, the Bharat Gaurav Trains will be controlled through COA, monitored through ICMS. The running of the Bharat Gaurav Trains shall be monitored by Divisional controls of the Railway Administration and its punctuality will be accorded priority accordingly.

(d)Applicable charges payable to the Railways administration:

The Service provider(RTDC) hereby acknowledges and agrees to pay to the Railway Administration, exclusive of any and all taxes (including any GST/service tax), other charges and duties, charges for hauling the Bharat Gaurav Trains by the Railway Administration at such charges as prescribed by the Railway Administration from time to time and applicable uniformly on a non-discriminatory basis("Haulage Charges"). Which are summarized as under:-

- 8.1. Haulage Charges
- 8.2 Composition of Haulage Charges
 - 8.2.1. Fixed Haulage Charge
 - 8.2.2. Variable Haulage Charge
- 8.3. Empty Haulage Charges
- 8.5. Right to Use(RU) Charge
- 8.7. Stabling Charges
- 8.8. Station User Fee
- 8.9 Cancellation Charges

(e)Assignment and transfer:

10.1. Assignment/Transfer

Notwithstanding anything to the contrary contained in this Agreement, the Service Provider shall not transfer and/or assign this Agreement to any third party except if the same is done in favour of a direct/indirect subsidiary or holding company (as defined in the Companies Act 1956) or any assignment/transfer of this Agreement by

the Service Provider to any Lender's Nominee for substitution of the Service Provider pursuant to a Financing Event of Default under any Financing Document through the Substitution Agreement (Transferee"), subject to such Transferee being found acceptable by the Railway Administration from a national security and public interest perspective.

(f) Liability of the Railway Administration and Settlement of claims:

11.1. Transit Loss

The Railway Administration shall not be liable for any loss, damage or destruction to any luggage of the Tourists travelling by the Bharat Gaurav Trains.

11.2. Settlement of Claims of Third Parties

11.2.1. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge and agree that the Railway Administration shall at any time, not be liable to any third party for any loss. Any Third Party Consignment Claims shall be settled by the Service Provider at its sole cost and expense.

11.2.2. The Service Provider hereby agrees and undertakes to indemnify and keep indemnified and otherwise save harmless throughout the Agreement Period, the Administration, its agents and employees, workers, contractors, sub- contractors and other representatives from and against any and all claims, demands made by any third parties against the Railway Administration, its employees workers, contractors, sub- contractors and workers, contractors, sub- contractors and other agents and representatives for or in relation to, any Third Party Consignment Claims.

5) Further, the applicant (RTDC) in order to get the operation of Palace on Wheels (POW) smoothly, sub-lated this task of right to operate, maintain and manage the POW luxury tourist train, including the carriage of tourists on the Railway administration, rail network in conformity with the provisions of Bharat Gaurav Train policy issued by the railway administration to M/s Cube Construction Engg. LTD in Consortium with M/s Easy Toll Solutions Pvt Ltd (hereinafter collectively referred to as the "Operator") and entered an agreement dated 28.06.2023 with operator the details of which are as under-

(a) Scope of the Agreement:

3.1.1. Subject to the provisions contained in this Agreement, the Authority hereby grants to the Operator, throughout the duration of this Agreement, a right to operate, maintain and manage the Palace on Wheels (POW) and carrying tourists on the Railway Administration Rail Network in accordance with the provisions of Bharat Gaurav Trains Policy issued by Railway Administration and amendments thereof, agreement signed between the Authority and the Railway Administration as well as the provisions of this Agreement.

3.1.2. Subject to the provisions contained in this Agreement, Operator shall be responsible for all the services for operation & maintenance of the POW which shall include but not limited to the following:

- a) Online booking of tours on the Palace on Wheels (POW) and sale of tickets.
- b) Marketing, publicity and advertisement of POW in India and outside across multiple media channels in order to facilitate ticket sales and increasing POW occupancy;
- c) Decide the tariff/price/charges for tours on the POW tours and other services to be provided to the POW guests in consultation with RTDC. Operator to have flexibility to revise the tariff to increase occupancy and generate more business for POW.
- d) Collect, retain and appropriate all revenues from POW operations including but not limited to the revenue from tours, food & beverages Bar, Spa, laundry services, advertisement & branding, souvenir sales, etc;
- e) Provide reception, food & beverages, catering, boarding & lodging, housekeeping, provision of linen, its replacement and laundry services, local sightseeing, entertainment of guests etc. of the 5-star or above category at all destinations and depute the required staff to provide these services.
- f) Coordination with Railway Administration for smooth running of POW and conducting tours as per Bharat Gaurav Trains (BGT) Policy and amendments thereof and other orders/ circulars issued by the Railway Administration for operation of the POW.
- g) Payment of POW running charges to Railway Administration which includes Right to Use (RU) Charges for rakes, haulage charges (fixed and variable), stabling charges, power car charges, user charges, etc
- h) Payment of Revenue Share to the RTDC within the stipulated timeframe as mentioned in this Agreement.
- i) Arranging and financing all expenses to be incurred while discharging its duties described in Scope of Services and in this Agreement, unless otherwise mentioned has roles and responsibilities of Railway Administration and/ or RTDC.
- j) timely payment of GST, corporate tax and all other applicable taxes as prevailing, laws, rules and regulations including any change/ amendments thereof.

(b) Role of Railway Administration in Operation of the POW:

3.2.1. Subject to the provisions contained in the Agreement signed between the RTDC and Railway Administration and in this Agreement, the following services shall be provided by Railway Administration with regards to operation of Palace on Wheels on payment of various charges (RU charges, fixed and variable haulage charges, stabling charges, power car charges, etc.) by the Operator as per BGT Policy and amendments thereof and any other order/ circulars issued by Railway Administration time-to-time for operation POW:

A) All the facilities necessary for the operation of the Palace on Wheels (POW) such as use of track, signalling, station premises, locomotives, fuelling of cars for operational requirements during run, telecommunication, maintenance staff, access to and from platforms, halts/stabling facilities at stations, watering, and maintenance facilities.

b) Safety, maintenance, and periodical overhauling of the coaches, including air-conditioners and power cars at a suitable railway workshop at a mutually suitable location on a programmed schedule to be agreed upon with RTDC.

c) Suitable space for stabling of rake, water, electricity, and workspace for carrying out internal repair will be provided free of charge by the Railway Administration subject to availability.

d) Any other activity as mentioned in the Agreement signed between the RTDC and the Railway Administration

(c) Obligations of the Authority (the applicant 'RTDC'):

6.1. Obligations of the Authority

6.1.1. The Authority, in addition to and without prejudice to its obligations specified in the other provisions of this Agreement, shall, without qualification, during the Agreement Period observe and comply with the following obligations:

a) Handover the Palace on Wheels (POW) on as-is-where-is basis with all associated Infrastructures and facilities (22 coaches equipped with existing available furniture, fixture, interiors, bed and bath linens, curtains, crockery, cutlery, etc.) to the Operator. A list of the items/ equipments of POW to be handed over to Operator are given in Schedule-1; Development

b) Within 10 days of signing the Agreement or extended period (as decided by RTDC), RTDC shall handover the POW on 'as-is-where-is-basis' to the Operator after having a joint inspection carried out wherein a list of all movable and immovable assets including furniture, fixtures, interiors, fit outs etc shall be prepared photo/ video-graphed and signed by authorized representatives of both Parties;

c) Liason between the Operator and Railway Administration for all relevant purposes for operation of the Palace on Wheels as per Bharat Gaurav Trains Policy and amendments thereof and any other order/ circular issued by Railway Administration for operation of the POW;

d) Agree to the Operator's right to operate, maintain and manage the Palace on Wheels (POW) in accordance with the provisions of this Agreement;

e) All litigations/ liabilities Involving the POW and/ or operation of the POW prior the Appointed Date and wherein action been filed against the Authority shall be conducted solely by the Authority at its own cost and expenses and the Operator shall not be liable for the same;

f) Upon receiving a written request from the Operator, make available, from time to time, all relevant circulars, notifications and like documents to the Operator pertaining to the performance of this Agreement or the rights and obligations of the Parties hereto.

g) Upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance to the Operator

- in procuring Applicable Permits required from any Governmental Instrumentality for implementation and operation of the Palace on Wheels (POW);
- h) Upon written request from the Operator, provide reasonable assistance to the Operator in obtaining access to all necessary infrastructure facilities and utilities, on terms no less favourable to the Operator than those generally available to commercial customers receiving substantially equivalent services;
- i) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- j) support, cooperate with and facilitate the Operator implementation and operation of the Project in accordance with the provisions of this Agreement;

(d) Obligation of the Railway Administration:

8.1.1. Subject to payment of applicable charges to Railway Administration by the Operator in timely manner for operation of the POW, the Railway Administration shall fulfill its obligations for operation & maintenance of the POW as mentioned in the Agreement signed between the RTDC and the Railway Administration.

(e) Applicable charges payable to the Railway Administration:

9.1. Composition of Applicable Charges

9.1.1 The Operator shall be responsible for payment of all applicable charges (detailed herein below) to the Railway Administration for Railway Administration's role (access to rail network, periodic maintenance of coaches, hauling of train, etc.) in running of POW in accordance with Agreement signed between the RTDC and Railway Administration (Schedule-3), BGT Policy and amendments thereof.

9.1.2. Composition of Applicable Charges to the Railway Administration for operation of the POW under the BGT Policy and amendment thereof is given below:

- a) Rake Security Deposit
 - b) Right to Use Charges of POW rake
 - c) Fixed Haulage Charges
 - d) Variable Haulage Charges (Per KM Variable Haulage Charges and Per Day Haulage Charges)
 - e) Indian Railways Staff Cost Per Day
 - f) Power Car Cost Per Day Per Coach
 - g) Stabling Charges
 - h) Station User Fee
 - i) Cancellation Charges
 - j) Any other charges as defined in BGT Policy and amendments thereof and/ or charges conveyed by Indian Railways for operation of POW
- 9.1.3. RTDC shall inform the Operator about the Haulage and other charges as communicated by Railway Administration based on the itinerary as approved by the Railway Administration.
- 9.1.4. Operator (through RTDC) shall pay all applicable charges/ fee (Haulage, stabling charges, RU charges for rakes, power car cost, staff cost, etc.) within the given timeframe as communicated by Indian Railways for operation of POW. For the purpose of payment of applicable charges/ fee to Indian Railways, RTDC shall act as

the liason only between the Operator and the Indian Railway and overall responsibility of making such payments shall lie to the Operator only.

9.2 Non-Payment of Applicable Charges and Consequences

9.2.1. Operator shall be solely responsible for making payment of all applicable charges/fee to Railway Administration under the BGT Policy and amendments thereof for operation of the Palace on Wheels (POW). Failure of making such payment within the stipulated timeframe intimated by the Railway Administration shall constitute Event of Default of the Operator and shall entitle the RTDC to recover such payments by revoking the Performance Security which shall be replenished to its original amount within 30 days of such revocation.

9.2.2. In case any penalties/ damages/ interests are imposed by the Railway Administration on RTDC due to non-payment of the Haulage and other Charges by the Operator, the same shall be recovered from the Operator.

9.2.3. In case the Operator does not clear all outstanding dues to Railway Administration and/or the replenish the Performance Security to its original amount within the stipulated timeframe intimated by the RTDC and/ or the Railway Administration then it shall be considered as Event of Default of the Operator and shall entitle the RTDC to initiate termination of the Agreement.

(f) Revenue share to RTDC:

10.1.1. In lieu of rights provided for operation of Palace of Wheels (POW), the Operator has quoted the (18.5%) of Annual Gross Revenue from POW Operations (not Lesser than 10% of Annual Gross Revenue or Rs. 5.00 Crore annually, whichever is higher) which is to be paid to the RTDC as per the payment schedule given subsequently. Revenue Share quoted by the Bidder(s) shall be exclusive of GST, all applicable taxes, duties, cess, surcharges, levies, etc. which shall be paid additionally by the Selected Bidder/ Operator to the RTDC.

10.1.2. Payment of Fixed Revenue Share:

10.1.3. Fixed Revenue Share (i.e. Rs. 5.00 Crore + GST and other applicable taxes) shall be paid in 4 equal installments on quarterly basis in advance, to RTDC, latest by 25th of the preceding month of applicable quarter without waiting for formal invoice from RTDC. For example, Fixed Revenue Share of April to June quarter shall be payable latest by previous 25th March. "

10.1.4. For quarterly payments, Operator shall follow standard calendar quarters only i.e. April-June, July-Sept, Oct-Dec and Jan-March. Fixed Revenue Share to be paid for first or second quarters shall be adjusted/calculated on pro-rata basis in a manner that next billing can be done on standard calendar quarterly basis.

10.1.5. Notwithstanding anything mentioned hereinabove, the Operator, within 15 days of issuance of Letter of Award (LOA), shall deposit first quarterly Installment of Fixed Revenue Share i.e. 1.25 Crore + GST and other applicable taxes (Rs. 5.00 Crore/4).

10.1.6. All payments by Operator to the RTDC including Fixed Revenue Share shall be paid in form of Demand Draft (DD) ONLY issued in favour of Executive Director (Finance), RTDC Limited, payable at Jaipur.

6) The questions raised by the Applicant are as under:-

Q1. Whether Goods and Service tax was required to be paid on the charges paid to the Railways on behalf of Operator and those charges were recovered from the Operator?

Q2. Why not the said charges were come under the scope of the pure agent ?

Q3. If charges paid to the Railways on behalf of Operator were not come under the scope of the pure agent or liable to be tax then what will be the tax Rate ?

7) With regard to first question raised by the Applicant i.e. whether GST is required to be paid on the charges paid to Railways on behalf of operator and those charges recovered from operator. In order to reach at the right conclusion let us examine the definition and legal provisions that are relevant here:-

Section 7. Scope of supply.-

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; ²[and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]

(d) ⁴[****].

⁵[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(3) Subject to the provisions of ⁶[sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

The definition of "Supplier" in term of Section 2(105) of CGST Rule, 2017 is as under-

"supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. The definition of "recipient" of supply of goods or services or both in term of Section 2(93) of CGST Rule, 2017 means-

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

The definition of "taxable supply" in term of Section 2(108) of CGST Rule, 2017 is as under-

"taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

In view of above legal provisions, we find that as per Agreement entered between Applicant and Indian Railways, the later has supplied various services to the Applicant wherein some of them are taxable and Indian Railways has not entered any Agreement with the operator at all. As the Applicant being recipient of service from the Indian Railways hence required to pay the GST on the charges paid to the Indian Railways and Applicant has sub-late this task to the operator for smooth operation of Palace On Wheels (POW), operator is supposed to pay the charges to the Applicant and not Indian Railways along with GST as per terms and conditions of Agreement dated 28.06.2023 entered between them (Rajasthan Tourism Development Corporation Ltd. and the operator)

8) The second question asked by the Applicant is that why not the said charges come under the scope of the pure agent

9) Before proceeding further it is very much essential to discuss the definition of Agent which in term of Section 2(5) of CGST Rule, 2017 is as under-

"agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Though the definition of "Pure Agent" is nowhere mentioned but on the basis of details downloaded from GOOGLE, it is as under-

A pure agent is a registered taxable person who liaises between other suppliers on behalf of his client. Under this concept, while providing services to the client, he also undertakes to receive other ancillary services from other service providers, and incurs expenditure on behalf of his client.

As per the explanation mentioned in Rule 33 of CGST Rule, 2017, "Pure Agent" means a person who,-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration: Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

The Rule 33 of CGST Act, 2017 reads as under:

Value of supply of services in case of Pure Agent- Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

10) In the instant case, we find that the Applicant has not entered into a contractual agreement with the recipient of supply i.e. operator to act as his pure agent to incur expenditure or costs in the course of supply of services other than the service provided to the recipient of service on his own account. The Applicant does

not receive any additional amount from the operator for other than the service provided to the operator with regard to operation of POW.

Since the Applicant has not procured any additional service, there is no question of holding to the title of service and therefore they cannot use any service for their own interest.

11) Further we find that-

(i)The supplier i.e. Applicant has not made any payment to the Indian Railways on authorization by the operator.

(ii)The applicant has not separately mentioned in the invoice issued by them the payment made as a pure agent to the recipient of services.

(iii)The Applicant has not procured any service for recipient of supply in addition to the supply of service on his own account e.g. right to operate maintain and manage the Palace on Wheel (POW).

12) In view of above, we hold that since none of the condition of Pure Agent enumerated in a rule 33 of CGST Rule,2017 is met, the Applicant cannot act as Pure Agent. As they are not Pure Agent, they are required to pay GST on the taxable supply received from Indian Railways.

13) The last question raised by the Applicant is that If charges paid to the Railways on behalf of Operator does not come under the scope of the Pure Agent or liable to be tax then what will be the tax Rate

14) In this regard we find that as per the Agreement dated 04.10.2022 entered between Indian Railways and the Applicant, the following charges are being charged by Indian Railways from Applicant for operation of Palace on Wheels (POW) as under-

- (i)Registration Fee
- (ii) Haulage Charge
- (iii)Right to Use(RU) Charge
- (iv)Stabling Charges
- (v)Station User Fee
- (vi)Cancellation Charges
- (vii)Security Deposit

15) The rate of GST for the aforesaid charges is as prescribed below-

S.No	Type of Charges	SAC	Rate of GST	Remark
1	Registration Fee	999799	18 %	
2	Haulage Charges	996512	5%	
3	Right to Use (RU)	997311	18%	
4	Stabling Charges	997311	18%	

5	Station User Fee	996512	5%	
6	Cancellation Charges	996512	5%	
7	Security Deposit			Though no GST is leviable on this amount but if it is adjusted against any aforesaid charge, then GST will be charged according to that charges.

In view of the above discussion, we rule as under:-

RULING

Q1. Whether Goods and Service tax was required to be paid on the charges paid to the Railways on behalf of Operator and those charges were recovered from the Operator?

Ans- Yes, GST was required to be paid by the Applicant on the charges paid to the Indian Railways for operation of POW as discussed earlier in point no. F-7.

Q2. Why not the said charges were come under the scope of the pure agent?

Ans- The said charges are not covered under the scope Pure Agent in view of the discussion held in point no. F-8 to F-12 mentioned above.

Q3. If charges paid to the Railways on behalf of Operator do not come under the scope of the pure agent or liable to be tax, then what will be the tax Rate?

Ans- Yes, the charges are paid to the Indian Railways by the Applicant and not operator and therefore are leviable to GST as per the rate mentioned in point no. F-15.

MA
28/06/2024

(Mahipal Singh)
MEMBER
CENTRAL TAX



WKG
28/06/2024

(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/ 83-88

Date:- 02/07/2024

SPEED POST

To,
M/s RAJASTHAN TOURISM DEVELOPMENT CORPORATION LIMITED
Third Floor, Paryatan Bhawan, Khasha Kothi
JAIPUR- 302001, RAJASTHAN

O/C

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Pr.Commissioner, CGST and Central Excise Commissionerate, JAIPUR, Rajasthan.
4. Joint Commissioner, State Tax, Circle-H, Jaipur-1st, Jhalana dungri, Divisional Kar Bhawan, Jaipur, Rajasthan
5. Assistant commissioner CGST, Division-G, Vidhyadhar Nagar, Jaipur, Rajasthan