

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

Advance Ruling No. KAR ADRG 31/2023

Date : 15-09-2023

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes

... Member (State)

2. Sri. T. Kiran Reddy

Additional Commissioner of Customs & Indirect Taxes ... Member (Central)

1.	Name and address of the applicant	M/s. JUSPAY TECHNOLOGIES PVT. LTD., # 444, Stallion Business Centre, 18 th Main, 6 th Block, Koramangala, Bengaluru – 560 095.
2.	GSTIN or User ID	29AACCJ9163G1Z9
3.	Date of filing of Form GST ARA-01	17-06-2023
4.	Represented by	Sri. Chetan Kumar, C A & Authorised Representative
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru. (Range-BSD5)
6.	Jurisdictional Authority – State	ACCT, LGSTO-17, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2906230096695 dated 17.06.2023.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Juspay Technologies Pvt. Ltd., (herein after referred to as 'Applicant'), # 444, Stallion Business Centre, 18th Main, 6th Block, Koramangala, Bengaluru – 560 095, having GSTIN 29AACCJ9163G1Z9, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and KGST Act.



Juspay Technologies

2. The applicant stated that they are registered under the GST Act and are engaged in the business of providing technology services for merchants to connect to their preferred payment aggregators and payment gateways; they have launched "Namma Yatri" app on ONDC platform. "Namma Yatri" is a ride-hailing SaaS platform / Mobility as a service (MaaS) solution offered to the auto-rickshaw community of Bengaluru which includes a driver-side software and customer-side software. "Namma Yatri" is a software developed, owned and operated by Juspay.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

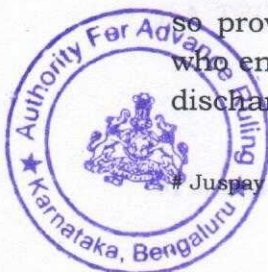
- a. Whether the Applicant satisfies the definition of an e-commerce operator and the nature of supply as conceptualized in Section 9(5) of CGST Act, 2017 r/w notification No 17/2017 dated 28.06.2017?
- b. Whether the supply by the service provider (person who has subscribed to Namma yatri) to his customers (who also have subscribed to Namma yatri) on the Applicant's computer application amounts to supply by the Applicant?
- c. Whether the Applicant is liable to collect and pay GST on the supply of services supplied by the service provider (person who has subscribed to Namma Yatri) to his customers (who also have subscribed to Namma Yatri) on the Applicant's computer application?

4. **Admissibility of the application :**

The advance rulings are sought by the applicant on the questions, at para 3 supra, in respect of the issues of (i) applicability of a notification issued under the provisions of the CGST Act 2017, (ii) determination of the liability to pay tax on any goods or services or both and (iii) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term, which are covered under Section 97(2)(b), 97(2)(e) & 97(2)(g) respectively and hence the application is admissible under Section 97(2)(b), 97(2)(e) & 97(2)(g) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnished the following facts relevant to the issue/s:

5.1 The Applicant submitted that the computer application services that are being provided by them are for facilitating business transactions of supply of services connecting through the platform of suppliers/ sellers and recipients/ buyers; they, for the application services (herein after referred to as "Namma yatri") so provided by them, shall charge membership & subscription fee to the person who enrolls by furnishing the application in the presubscribed form; they intend to discharge output tax on the membership/ subscription fee received from the



members registered for availing the benefits in Namma yatri App; currently, they are not charging any membership fee/ subscription fee to the enrolled persons.

5.2 The Applicant submitted that, every person desirous of availing of their APP "Namma yatri" services, shall make an application on line in the pre-subscribed form duly filled and confirmed along with the specified soft copies of documents. Accordingly, granting of license to use the "Namma yatri" is subject to the **"Terms and Conditions between applicant and Driver"** (herein after referred as Driver's Terms and Conditions). A sample copy of the "Driver's Terms and Conditions" is submitted as **ANNEXURE-4**.

5.3 The Applicant submitted that it is settled proposition of law that where there is an agreement/contract, the nature of the contract shall be determined on the basis of the terms and conditions contained therein and by reading the contract as a whole. Consequently, when the "Driver's Terms and Conditions", are read, especially, **the clauses- 3, 4, 9 and 11**, it is designed to establish the nature of the said agreement/contract, which is limited to providing of licence or permission to use "Namma yatri" by the subscribers of the "Namma yatri". The clauses **3, 4, 9 and 11, contained in the "Driver's Terms and Conditions" are re-produced in Annexure - 5 for ready reference**:

5.4 Further, when the "Driver's Terms and Conditions" is read as a whole, it confirms and establishes the facts that where the licensee creates "Business User Account" ("BSA" for short), in terms of clause 2 and 3 of the "Driver's Terms and Conditions"; the subscriber of the "Namma Yatri" enters into business deals/transactions on their own with their clients and business associates for supply of services, the terms and conditions governing such contracts of supply, such as quality, price, etc., are as mutually agreed upon by them and the Applicant neither has a say/ a role in that regard nor the Applicant is involved directly or indirectly in such supply and providing of services as the case may be. The Applicant is not in any way concerned with collection of the consideration for supply from the clients / business associates of the subscribed suppliers. All such matters are only within the knowledge and domain of the subscribers of the "Namma Yatri" of the Applicant and their business clients and associates. Clauses 4 and 9 of the "Driver's Terms and Conditions" establish the conditions regarding consideration.

5.5 Consequently, the Applicant submits that the subscribers of "Namma yatri" are not under any obligation to furnish the details of business transactions entered into by using the "Namma Yatri" of the Applicant, such as, nature of supply at any time during the period covered by the license or at any time thereafter. However, this information is available in "Namma Yatri". For the purposes of the CGST, SGST and IGST Acts, the taxable supplies effected by the Applicant is limited to providing of "Namma Yatri" and collection of "registration & monthly subscription fee from its subscribers of "Namma yatri" and charging, collecting and remitting tax following in terms of the charging provisions of Section 9(1) of the CGST and IGST Acts and Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 issued



under the CGST Act and similar/identical notification issued under Section 9(1) of the Karnataka SGST Act.

5.6 Applicant is focused on creating a system that helps link consumers to service providers whilst maintaining a safe digital ecosystem for both parties. **With a commission-free monetization model**, Namma yatri is a service provider's hub wherein the supplier has absolute ownership of his supply and the applicant has no rights over their supply.

5.7 Applicant submits that on Namma Yatri the auto driver, after making payment of membership fee, becomes the registered member on the App; can publish the nature of services provided, nature of facilities provided or any other activity undertaken benefiting the users.

5.8 Applicant submits that the relationship between the members registered on our Namma Yatri and the customers would be of supplier and recipient and any monetary consideration involved between them is purely privy to their contract and the Applicant in no way connected with such contract. If there is any dispute between the members registered on Namma yatri and the recipients of services it is purely between them and the Applicant is not responsible for any dispute between them. Kindly refer clause 9 of "Driver's Terms and Conditions" which establishes the same.

5.9 Applicant submits that in their case the transaction between the supplier and buyer takes place with the use of Namma yatri and there is no involvement of the Applicant in either arranging for supply of services from the members registered on the Namma yatri or arranging for collection of any consideration or any other form of agreed means of payment from the buyers to the registered members.

5.10 Therefore, the business model of the Applicant is neither in the nature of "market place electronic commerce" or "fulfillment electronic commerce" nor "hybrid electronic commerce" models.

6. **Applicant's understanding of Law:** The applicant furnished their understanding / interpretation of law inter alia stating as under:

6.1 In the light of the terms and conditions contained in "Driver's Terms and Conditions" and the facts narrated and explained as above, it is bonafide belief and understanding that the Applicants liability to pay tax is limited to payment of tax at the rate of 18% under Section 9(1) of CGST and SGST Acts and Section 5(1) of the IGST Act, read with Notification No.11/2017-Central Tax (Rate) dated 28.6.2017 issued under the CGST Act and similar/identical notification issued under Section 9(1) of the Karnataka SGST Act and Notification No. 8/2017-Integrated Tax (Rate) dated 28.6.2017, on the consideration received/receivable of "registration fee and monthly subscription" that the Applicant collects from the subscribers of their "Namma Yatri" app and nothing more.



6.2. Besides, it is also the understanding and bonafide belief of the Applicant that, the Applicant is not liable to pay tax under Section 9(5) of the CGST and SGST Acts and Section 5(5) of the IGST Act, read with Notifications Nos.17/2017-Central Tax (Rate) dated 28.6.2017 issued under the CGST Act and similar/identical notification issued under Section 9(1) of the Karnataka SGST Act and 14/2017-Integrated Tax (Rate) dated 28.6.2017, respectively.

6.3. REASONS:

(i) As per the provisions of Section 9(1) of the CGST and SGST Acts and Section 5(1) of the IGST Act, which are principal charging provisions of the Act, the liability to pay tax on "outward" taxable supplies of services, as the case may be, is on the "supplier". The expression "supplier" has been defined under Section 2(105) of the CGST/ SGST Acts, which reads as under:

SECTION 2(105) OF CGST/SGST ACT:

"2. In this Act, unless the context otherwise requires: -

*(105) **"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;"*

In the present matter of the Applicant, it is not in dispute that in so far as taxable supplies effected by the subscribers of the "Namma yatri" of the Applicant to their clients / business associates by using the Applicants "Namma yatri", the "suppliers" for the purposes of the CGST, SGST & IGST Acts are the subscribers of the "Namma yatri" of the Applicant and not the Applicant and therefore, the liability to pay tax on the value of all such supplies is on the respective suppliers and certainly not on the Applicant.

(ii) It is also the understanding and bonafide belief of the Applicant that the provisions of Section 9(1) and 5(1) of the CGST/SGST Acts and IGST Act is not subject to Section 9(5) and 5(5) of the said Acts, respectively.

(iii) Further, harmonious reading of the definitions of the expressions **"electronic commerce"** and **"electronic commerce operator"** occurring in Sections 2 (44) and 2(45) of the CGST/SGST Acts, respectively, and Section 9(5) of the CGST/SGST Acts, and 5(5) of the IGST Act, which are re-produced hereunder, it is Applicants belief that the said provisions and the notifications issued thereunder, shall have applicability only to **"electronic commerce operator"** like Reliance Jio or Amazon or such other taxable persons who supply goods and/or services or both on their own account or on account of others with the aid and application of the "APP PLATFORM" and they either undertake to supply goods and/or services or both on their own account/ on account of other taxable persons and directly or indirectly connected with entering into contract for supply, storing/warehousing, packing, delivery of goods, collection of consideration, etc.



Section 2(44)	Section 2(45)	Section 9(5)
"2. In this Act, unless the context otherwise requires: - (44) "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network."	"2. In this Act, unless the context otherwise requires: - (45) "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce."	9. Levy and collection: "(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: Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax: Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax

SECTION 5(5) OF IGST ACT:

"5. Levy and Collection:

(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:

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



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

7. **Applicant's Interpretation of Law :** The applicant furnished their interpretation of law, in respect of the questions at para 3 supra, inter alia stating as under:

7.1 From the above nature of transactions involved in our case, the Applicant is of the opinion that output tax is payable by the Applicant only on the membership fee collected from individuals who are availing the services of our Namma Yatri App to provide services and in no way the Applicant is liable for tax on the transactions that takes place subsequently between the registered members (service provider) on our Namma yatri and their customers.

7.2 Applicant submitted that Section 7(1)(aa) of the CGST Act, has been retrospectively inserted from 1st July, 2017 which states that any 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 shall be considered as a Supply. 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.

7.3 Section 9(5) r/w notification No 17/2017 dated 28.06.2017, notification No 23/2017 dated 22.08.2017 and notification No 17/2021 dated 18.11.202 doesn't contemplate or envisaged non-interfering and commission free business adopted by the Applicant. It is applicable to business model which collects payment on behalf of the supplier. As the Applicant has not collected any payment on behalf of the supplier the question of collecting tax on behalf of the supplier can't arise. Hence, the Applicant wouldn't be liable for the GST on the transaction carried on by the supplier with his customer. Moreover, the supplier raises invoice to his customer & the customer pays directly to the supplier which rules out any attempt on the part of the Applicant to pay taxes of the supplier.

7.4 This Hon'ble bench in the case of Advance Ruling No. KAR ADRG 36/2022, dated 27/10/2022 in respect of M/s Multi-Verse Technologies Private Limited on similar grounds have been kind to decide as follows:

- a) In the matter of Question No 1 of Annexure -1, the Hon'ble court adjudged that 'the Applicant satisfies the definition of an e-commerce operator but does not satisfy the conditions of Section 9(5) of the CGST Act, 2017 r/w



Notification No.17/2017 dated 28.06.2017, for the discharge of tax liability by electronic commerce operator.

- b) In the matter of Question No 2 of Annexure -1, the Hon'ble court adjudged that 'the supply by service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application does not amounts to supply by the Applicant.
- c) In the matter of Question No 3 of Annexure -1, the Hon'ble court adjudged that 'the Applicant is not liable to collect and pay GST on the supply of goods or services supplied by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application.

The facts, circumstances and nature of supply of the Applicant matches that of the above company and that the Hon'ble members be kind to consider the same at the time of deciding the application.

PERSONAL HEARING PROCEEDINGS HELD ON 13.07.2023

8. Sri Chetan Kumar, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

9. The applicant submitted additional written write up on nature of supply as conceptualized in Section 9(5) of the CGST Act 2017 read with Notification No.17/2017 dated 28.06.2017, inter alia stating as under:

9.1 The applicant quoting the definitions of 'electronic commerce' and 'electronic commerce operator' in terms of Sections 2(44) and 2(45) respectively, Section 9(5) of the CGST Act 2017 and Notification No.17/2017-Central Tax (Rate) dated 28.06.2017, wherein it is notified that the tax on intra-state supplies of services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle shall be paid by the electronic commerce operator, submits that the applicant is a technology provider to rickshaw drivers and would like to distinguish from rent-a-cab aggregator; they are not registered with the regional transport office (RTO) as a rent-a-cab aggregator as they do not fulfil the mandated conditions and thus they are not an e-commerce operator.

9.2 The tax on intra state supplies of notified services shall be paid by the e-commerce operator, in terms of Section 9(5) of the CGST Act 2017, only if such services are supplied through it (e-commerce operator platform). The crucial and relevant aspect of the section and its applicability are as follows:

- a) The services by the supplier to the consumer are supplied through the electronic commerce operator



- b) The service should be an intra-state supply
- c) The tax on services supplied shall be paid by the electronic commerce operator

Applying the principle enumerated above in the instant case, they don't fulfil the conditions of being an electronic commerce operator and the supply of services **through** them. The crucial phrase for the applicability of the section is "supply of services through e-commerce operator".

9.3 The Act or Notification doesn't define or clarify the situations of "supply of services through an e-commerce operator" and thus the rules of jurisprudence and interpretation are required to understand the phrase and the word as used in common parlance. The word through as defined in the oxford's advanced learner's dictionary is submitted below:

- a) From one end or side of something / somebody to the other
- b) See, hear, etc. **through** something to see, hear, etc something from the other side of an object or a substance
- c) **From the beginning to the end of an activity, a situation or a period of time**
- d) Past a barrier, stage or test
- e) Until, and including

The word **through** is a preposition which means "a word or group of words, such as in, from, to, out of and on behalf of, used before a noun or pronoun to show place, position, time or **method**". The word **through** in Section 9(5) is used to indicate the method under which the supply of services was initiated, carried on and concluded. The dictionary meaning clearly specifies that the word **through** implies that the supply should be initiated, carried on and concluded by the specified method.

9.4 In the instant case the supply is not carried on and concluded by using their 'Namma Yatri' app; they invite attention to the facts furnished in their application as well as their submissions during the personal hearing, which are reiterated as under:

- a) The applicant provides technology to auto drivers (through the APP). This allows the passenger to identify the nearby auto **through** which he can take the ride and no further
- b) The ride is not monitored by the applicant
- c) The fare and the method of its collection is not known to the applicant
- d) The fare is not collected **through** the applicant



- e) The applicant is not responsible to the supplier for non-receipt of the consideration for the supply
- f) The applicant is not responsible to the consumer for deficiency on the part of the supplier in rendering of the services.

9.5 It can be clearly concluded, from the above, that the applicant is only involved in connecting the supplier of services and consumer of the services with no further involvement (like a Just dial or business linking services). The supply happens independent of the applicant and the applicant is involved in identification of the supplier of services and doesn't take responsibility for the operational and completion of the ride. The applicant doesn't fulfil the conditions stipulated in Section 9(5) of the CGST Act 2017, which is "supply of services **through**", as no portion of supply of services is under the control of the applicant. The applicant can't control the fare of the ride and the collection associated with completion of the ride and thus the applicant can't be held liable to collect and pay the tax as specified in Section 9(5) of the CGST Act 2017 read with Notification No.17/2017-Central Tax (Rate) supra. The applicant's nature of business doesn't allow collection of the fare on behalf of the supplier. Thus the services can't be deemed to have been supplied through it (APP) just because the service is initiated through it.

9.6 An e-commerce operator, as specified, should supply the services through it. The services are only initiated by the applicant's app 'Namma Yatri' and not supplied through the applicant's app and hence the applicant can't be held to be an e-commerce operator. Moreover, the Act read with the Notification supra transfers the burden of tax from the supplier of services to the e-commerce operator as the e-commerce operator has control over the fare paid to the supplier and hence can charge and collect the tax on supply of services. In the instant case this condition can't be honoured as the applicant has no control over the fare paid to the supplier. Thus the applicant pleads helplessness to collect and pay tax on behalf of the supplier. Therefore the applicant can't be concluded as a supplier for services rendered by auto driver.

FINDINGS & DISCUSSION

10. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

11. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.



12. The applicant provides computer application services through the "Namma Yatri" APP for facilitating business transactions of supply of services connecting through the platform of suppliers/sellers (auto drivers) and recipients/buyers (Customers who use the auto driver's service), registered under the said APP on payment of membership charges & subscription fee and also on furnishing required documents as well as on entering into respective agreements. Accordingly licence to use the APP is granted, to the members/subscribers, subject to the respective terms & conditions specified in the respective agreements. In view of this, the applicant sought advance ruling in respect of the questions mentioned at para 3 supra.

13. The applicant submitted that licence to use the "Namma Yatri" APP allows to create two types of accounts i.e. Business User Account for service provider (auto driver) and the Individual/Customer User Account for service recipient (recipient of service provided by auto driver). Clauses 3, 4, 9 & 11 of the "Drivers Terms and Conditions" establish that the nature of agreement/contract is limited to providing licence or permission to use "Namma Yatri" App.; the subscriber of the APP enters into business deals/transactions on their own with their clients and business associates for supply of services, in terms of clauses 2 & 3 of the "Drivers Terms and Conditions"; the terms & conditions governing business contracts of supply such as quality, price etc., are mutually agreed upon by the Business user and their clients and applicant does not have any say/role; that the applicant are not involved either directly or indirectly in supply of services; they are not concerned with the collection of the consideration for such supplies; the subscribers of the impugned APP are not under any obligation to furnish the details of their business transactions such as nature of supply etc., during the licence period; they are limited to providing the APP services and collection of registration & subscription fees from the subscribers of their APP; they charge, collect and remit the tax, on the fees so collected, in terms of Section 9(1) of the CGST Act 2017 and Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.

14. The applicant further submits that they focused on creating a system that helps link consumers to service providers while maintaining a safe digital ecosystem for both parties, with a commission-free monetization model; 'Namma Yatri' is a service provider's hub wherein the supplier has absolute ownership of his supply and the applicant has no right over their supply; the registered auto drivers on the App can publish the nature of services/facilities provided or any other activity undertaken benefitting the users; the monetary consideration involved between the supplier (auto driver) and the recipient (Customer/Consumer) is purely privy to their contract and the applicant is no way connected with such contract; they are not responsible for any dispute between the supplier and recipient; they are not involved in either arranging for supply of services on 'Namma Yatri' App or arranging for collection of any consideration or any other form of agreed means of payment.

The applicant, quoting the definitions of 'electronic commerce' and 'electronic commerce operator' in terms of Sections 2(44) and 2(45) respectively,



Section 9(5) of the CGST Act 2017 and Notification No.17/2017-Central Tax (Rate) dated 28.06.2017 contends that the applicant is a technology provider to auto rickshaw drivers and would like to distinguish from rent-a-cab aggregator; they do not fulfill the mandatory conditions that are required to obtain rent-a-cab aggregator licence from the RTO and therefore they are not registered with the regional transport office (RTO) as a rent-a-cab aggregator and thus they are not an e-commerce operator.

16. Now, the core issue before us to decide is whether the applicant qualifies to be an e-commerce operator or not and whether they are liable to discharge tax liability in terms of Section 9(5) of the CGST Act 2017. We proceed to examine the said issue and in this regard we invite reference to the Section 2(44), 2(45) and 9(5) of the CGST Act 2017, which are as under:

2(44) —electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network;

2(45) —electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

9. Levy and collection.

*(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:*

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

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

17. It could be inferred from the definitions supra that Electronic Commerce Operator (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce i.e. for the supply of goods or services or both, including digital products over digital or electronic network. In the instant case the applicant owns digital platform ('Namma Yatri' APP), for the supply of services. Thus the applicant squarely fits into the definition and qualifies to be an Electronic Commerce Operator.

18. Now we proceed to examine the charging section i.e. Section 9(5) of the CGST Act 2017, mentioned at para 15 supra, which stipulates that all the provisions of the CGST Act 2017 shall apply to electronic commerce operator, as if he is the supplier liable for paying the tax in relation to the supply of certain services subject to the following conditions namely:



- a) The categories of the services shall be specified by notification, on the recommendation of the Council, by the Government.
- b) The supply of such specified services shall be intra-state supplies.
- c) The supply of such service is through the electronic commerce operator.

Vide Notification 17/2017-Central Tax(Rate) dated 28.06.2017, issued under Section 9(5) of the CGST Act, 2017, Government has notified that tax on intra-state supplies for '(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;' shall be paid by the electronic commerce operator. Further explanation (b) to the said notification specifies that "maxicab", "motorcab", and "motor cycle" shall have the same meaning as assigned to them respectively in clauses (22), (25) and (26) of Section 2 of the Motor Vehicles Act, 1988. We invite reference to the relevant definition of "motorcab" which is as under:

(25) "motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

In the instant case the services of transportation of passengers are provided by an auto rickshaw, which is a motor vehicle adapted to carry maximum three passengers excluding driver and thereby it can carry not more than six passengers excluding the driver and hence qualifies to be a "motorcab". Thus the first two conditions viz., (a) and (b) are satisfied in the instant case, in as much as the category of services of Intra-state supplies are notified by the Government covering services by way of transportation of passengers by motor cab. However, the crucial and most important issue is whether the impugned services are supplied through the electronic commerce operator or not. The word "**through**" in Section 9(5) is not defined in the relevant context and hence we proceed to discuss the meaning of the said word/phrase.

19. In this regard, we invite reference to Merriam Webster dictionary, in accordance to which the word 'through' is used as a function word to indicate means, agency, intermediacy such as by means of, by the agency of etc. The word 'through' is also used as a function word to indicate extent, period of time such as during entire period, from the beginning to the end, to and including etc. Thus the word through in the phrase **services supplied through electronic commerce operator**, in Section 9(5) *ibid*, gives the meaning that the services are to be supplied by means of / by the agency of / from beginning to the end / during entire period by e-commerce operator. In the instant case, it is observed that the applicant, because of their unique business model, merely connects the auto driver and passenger and their role ends on such connection; they do not collect the consideration; they have no control over actual provision of service by service provider; they do not have the details of the ride; they do not have control room/call centre etc. The supply happens independent of the applicant and the applicant is involved only in the identification of the supplier of services and doesn't take responsibility for the operational and completion of the ride. Thus it is observed



that supply of services are not through the electronic commerce operator, but are independent. Therefore, the applicant does not satisfy the conditions of Section 9(5) for the discharge of tax liability by electronic commerce operator. Thus the applicant, though qualifies the definition of being an e-commerce operator, is not the person liable for discharge of tax liability under Section 9(5) of the CGST Act, 2017.

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

RULING

- a. The Applicant satisfies the definition of an e-commerce operator but not the nature of supply as conceptualized in Section 9(5) of CGST Act, 2017 r/w notification No 17/2017 dated 28.06.2017.
- b. The supply by the service provider (person who has subscribed to Namma yatri) to his customers (who also have subscribed to Namma yatri) on the Applicant's computer application does not amounts to supply by the Applicant.
- c. The Applicant is not liable to collect and pay GST on the supply of services supplied by the service provider (person who has subscribed to Namma Yatri) to his customers (who also have subscribed to Namma Yatri) on the Applicant's computer application.


(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority
Place: Bengaluru
Bengaluru - 560 009

Date : 15-09-2023

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 Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-17, Bengaluru.
5. Office Folder.


(T. Kiran Reddy)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

