

**WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

14 Beliaghata Road, Kolkata – 700015

(Constituted under Section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the Applicant	NATURAL LANGUAGE TECHNOLOGY RESEARCH
Address	Webel Bhavan, 6th Floor, Module C and D, Block EP and GP, Moni Bhandar, Street Number 19, Salt Lake, Sector-V, North Twenty Four Parganas, Pin Code-700091
GSTIN	19AAAJN0704A1ZS
Case Number	WBAAR 14 of 2024
ARN	AD190724019772T
Date of application	August 05, 2024
Jurisdictional Authority (State)	Salt Lake Charge
Jurisdictional Authority (Central)	Bidhan Nagar Division, Kolkata North Commissionerate
Order number and date	11/WBAAR/2024-25 dated 10.09.2024
Applicant's representative heard	Mr. Harsh Gadodia, CA and Mr. Jitesh Nopany, CA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain

provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is a society registered under the West Bengal Societies Registration Act, 1961 which is a non-profit organisation who is engaged as a research and development organisation under the Department of Information Technology & Electronics, Government of West Bengal and is inter-alia engaged in the development of language tools & technology as well as Online Literary & Linguistic resources etc.

1.3 The applicant, under the direction of the Government of West Bengal, has developed a website and mobile application named "Yatri Sathi Mobile App" (hereinafter referred to as "the App"). The App has been launched on the ONDC platform and is designed as a ride-hailing Software as a Service (SaaS) platform, also categorized as a Mobility as a Service (MaaS) solution. The primary purpose of the App is to facilitate the business transaction of supply of services by connecting customer to the drivers of West Bengal.

1.4 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

(i) Whether the applicant falls under the purview of the E-commerce Operator as defined in sec 2(45) of the GST Act?

(ii) Whether the applicant shall be deemed to be the service provider u/s 9(5) of the GST Act read with notification no. 17/2021-Central tax(rate) dated 18th November, 2021 for the Driver services provided by the Driver to the Customer connected by "Yatri Sathi Mobile App"?

(iii) Whether the applicant shall be liable to collect and pay GST on the services supplied by the Drivers (person who subscribed the app) to the Customers (person who subscribed the app) connected through the App considering the Applicant as service provider u/s 9(5) of the GST Act read with notification no. 17/2021-Central Tax (Rate) dated 18th November, 2021?

1.5 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (b) of sub-Section (2) of Section 97 of the GST Act.

1.6 The Applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the revenue has raised no objection to the admission of the application.

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits to have developed a website and mobile application named "Yatri Sathi Mobile App" (hereinafter referred to as "the App") under the direction of the Government of West Bengal for the purpose of facilitating the business transaction of supply of services by connecting customer to the drivers of West Bengal.

2.2 The applicant also submits that the App comprises of two components: (i) Driver-side App and (ii) Customer-side App. The Driver-side App is designed for use by drivers to offer transportation services by means of four wheeler or two wheeler vehicles. On the other hand, the Customer-side App is intended for customers to connect with drivers for their transportation needs. Through this dual-application system, the App effectively links customers with available drivers. The ownership and management of the Yatri Sathi Mobile App rest solely with the applicant. The App's development and ongoing operations are overseen by the applicant, ensuring compliance with the directives and standards set forth by the Government of West Bengal.

2.3 The applicant further submits that any driver wishing to avail the services of the App is required to download the App and register for and maintain an active personal user account. For integrating the driver vehicle and on-boarding as a Driver on a platform, driver must complete the registration process on the Driver App. As part of this application process, drivers are required to upload specified documents as needed. Upon submission of the application, the granting of a license to use the App is contingent upon acceptance of the terms and conditions set forth between the Applicant and the driver (hereinafter referred to as the "Driver's Terms and Conditions"). These terms and conditions must be accepted by the driver before they can use the App. Similarly, any customer or passenger wishing to use the Yatri Sathi Mobile App must download the App and provide the necessary information as required. After providing the required information, the customer must accept the terms and conditions set forth between the Applicant and the customer (hereinafter referred to as the "Customer's Terms and Conditions") to proceed with using the App. As per the Drivers terms and conditions, the Applicant's role is limited to providing a platform for drivers and customers to connect, without exercising any control or influence over the actual driving services provided. The drivers operate independently, and the Applicant does not supervise, manage, or oversee the manner in which

the services are rendered. Consequently, any issues arising from the performance of the drivers, such as service quality or conduct, fall outside the applicant's purview and responsibility.

2.4 The applicant states that for allowing the usage of the platform by the Drivers, the Applicant charges a flat subscription fee from drivers for each ride facilitated through the platform regardless of the total fare charged by the driver on which he pays GST. This fee arrangement emphasizes that the Applicant operates on a commission-free model, where the primary function of the platform is to serve as a hub connecting drivers and customers. Furthermore, the Customer's Terms and Conditions, it is evident that the primary role of the App, is to function as an intermediary platform that facilitates the connection between customers seeking transportation services and drivers willing to provide these services. The application merely provides the technological infrastructure to enable these connections without directly engaging in the transportation services themselves. In the operational model currently in place, all payments for the services provided by the Drivers are made directly by the Customers to the Drivers. The Applicant does not receive or process these payments, nor does the Applicant assume any responsibility for the financial transactions between the Customers and the Drivers and also does not have access to or knowledge of the payment methods used by the Customers to compensate the Drivers.

2.5 In this context, the Applicant cites the provisions of Section 9(1) of the GST Act read with Section 5(1) of the IGST Act being the principal charging provision of tax which envisage that tax shall be charged on supply of goods or services or both and shall be paid by the taxable person. The Applicant also cites the definition of "taxable person" as per Section 2(107) of the GST Act which means a person who is registered or liable to be registered under sec 22 or sec 24 of the GST Act and argues that provisions under Sections 22 and 24 of the GST Act reveal that the term "person" refers to the supplier of goods or services. Accordingly, it is the supplier, as defined in Section 2(105) of the GST Act, who is liable to tax under the relevant provisions of the Act.

2.6 The main content of the Applicant is that it is the person who supplies the goods or services or both including his agent shall be liable to pay tax. The specific scenario at hand involves the Driver providing services to customers via the App where the App serves only as a digital platform facilitating the connection between the Driver and the customers and hence the Applicant is merely a facilitator, and not the direct provider of any transportation services which should make the driver, who is directly providing the service, liable for paying the GST on the transportation services provided. In this context, the Applicant emphasizes on clause 11 of the

drivers terms and condition, claiming that the drivers are designated as independent contractors and the relationship between the Applicant and the drivers operates on a principal-to-principal basis and not agent. The said clause is represented as below:

11. RELATIONSHIP BETWEEN THE PARTIES

The Driver shall operate as and have the status of an independent contractor. The relationship between the Company and the Driver is on a principal-to-principal basis and nothing in these Terms and Conditions will be construed to create a partnership, joint venture, an association of persons, agency (disclosed or undisclosed), franchise, sales representative, or employment relationship between the Company and the Driver. It is clarified that the Driver will not have any right to conclude any contract for and / or on the behalf of the Company. The Driver shall not be deemed for any purpose to be an employee of Yatri Sathi or any of its Affiliates. Yatri Sathi shall not be responsible to the Driver or any other authorities for any payroll-related taxes related to the performance of Driver Services hereunder or withholding or other taxes including but not limited to central or state income tax, social security benefits or unemployment compensation.

2.7 The Applicant also cites the provisions of Section 9(5) of the GST Act, 2017 which notifies certain categories of services, the tax on which shall be paid by the electronic commerce operator if such services are provided through it considering electronic commerce operator as a service provider. In this context, the Applicant refers to Notification no. 17/2017-Central Tax (Rate) dated 28th June, 2017 amended by notification no. 17/2021-Central Tax (rate) dated 18th November, 2021 which has specified the category of services, the tax on which shall be paid the E-commerce operator, out of which the relevant category of services in this case being - (i) *services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, or any other motor vehicle except omnibus;*” In this context, the Applicant has also argued that the drivers are transporting the passengers through means of four wheelers and two wheelers vehicles which falls under the ambit of “motorcab” defined in sec 2(25) of the Motor Vehicle Act, 1988 and “Motor cycle” defined in sec 2(27) of the Motor Vehicle Act, 1988.

2.8 In order to establish his case whether the Applicant falls under the purview of “Electronic Commerce Operator” as defined in Section 2(45) of the GST Act and whether transportation of passenger services are supplied through electronic commerce platform, the Applicant has referred to the relevant terms and conditions entered between Applicant and the Driver and entered between the Applicant and Customer separately in order to understand the role of the Applicant and its responsibility. The said Terms and Conditions as cited by the Applicant are represented separately as below:

“DRIVER’S TERMS AND CONDITIONS -

3.13 Yatri Sathi shall not be responsible for any cancellation or refusal of provision of Driver Services.

3.14 Yatri Sathi helps Customers to locate Drivers willing to offer the Driver Services.

3.16 The Driver shall be solely responsible and liable for:

- any failure to complete a ride by the Driver;*
- any failure to pick up Customer(s) at the allotted time and/or place;*
- any act or omission on the part of its Drivers including any rash and negligent driving, verbal, physical or harassment of any nature;*
- for provisioning of services;*
- any violation or non-adherence to the Applicable Law by the Driver;*

3.17 The Driver hereby agrees that any complaint/s by Customers regarding the Vehicle or Driver will be liability of the Driver for which Yatri Sathi shall not be responsible in any manner. If there is any serious complaint regarding any particular Vehicle and/or Driver, Yatri Sathi may, in its sole discretion, immediately terminate the Account of such Driver, by providing a notice to Driver to this effect.

4. Payment

4.1 The Company has the discretion to charge any software usage/ software subscription fees including taxes as per applicable laws, from the Driver if decided by the Company. The company charges a subscription fee of INR XX (inclusive of GST per ride to the driver for open market rides, and INR XX (inclusive of GST) per ride to the driver for special zone rides.

4.2 The Driver shall charge Fare from the Customer directly and the method of such payment is not known to the Company.

4.3 The fare is based on the West Bengal Transport Department which determines the fares by issuing notification on time to time basis under the power conferred by sec 67 of the motor vehicle act, 1988 and is not determined by the Company.

6. Disclaimer

Company does not warrant that You will be able to use the Driver App or that the Driver App will be uninterrupted or error-free or that the defects will be capable of being corrected by Company in a timely fashion. Yatri Sathi’s Driver App, and all other technology developed and installed on your Device are provided on an “AS IS” and “AS AVAILABLE” basis and Company specifically disclaims all warranties and indemnities,

express, implied or statutory, including without limitation any warranty of merchantability, fitness for a particular purpose, accuracy, completeness, or any other warranty arising from the course of performance or course of dealing. The provisioning and quality of services is solely the responsibility of the Driver and is as per your agreement with the Customer(s) and the Company has no control over such Driver Services. Any dispute between you and your Customer is your responsibility and the Company shall not be liable for the same. Further, the Company shall not be responsible for non-receipt of fare by you from your Customer(s).

9. Limitation

9.3 The Company is not responsible for the behavior, actions or inactions of the Driver or quality of the Vehicle or Driver Service. Any contract for the provision of Driver Services is exclusively between the Customer and the Driver and the Company is not a party to the same.”

“CUSTOMER’S TERMS AND CONDITIONS -

2. Software

2.1. The software will enable you to find taxis of Drivers who are willing to offer their services.

2.4 Company bears no responsibility and liability for delays and losses suffered by you or caused to you as a consequence of the breakdown of the Vehicle or refusal of ride by the driver.

3.Payment

3.1 You shall be required to pay charges to the Driver for the services used by you either by paying cash or through UPI, to the driver directly. The estimated rate of the services shall be notified to You while placing the booking request on the Yatri Sathi App.

10. Limitation of Liability

COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SOFTWARE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (i) YOUR USE OF THE SOFTWARE OR

APPLICATION OR YOUR INABILITY TO ACCESS OR USE THE SOFTWARE OR APPLICATION; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND DRIVER, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND COMPANY'S REASONABLE CONTROL. COMPANY'S SOFTWARE OR APPLICATION MAY BE USED BY YOU TO FIND TAXIS OF DRIVERS WHO ARE WILLING TO OFFER THEIR SERVICES, AND YOU AGREE THAT COMPANY HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY RIDE OR SERVICES PROVIDED TO YOU BY DRIVER."

2.9 In support of the afore-said clauses, the Applicant argues that on the basis of terms and conditions of the contract/agreement entered between Applicant and Driver and between Applicant and Customer, the following principles/aspects can be drawn –

DRIVER'S TERMS AND CONDITIONS -

- i) Applicant role is to provide the platform to connect driver and customer [Clauses 3.13 (D) & 2.1 (C)]
- ii) The drivers operate independently, and the Applicant does not supervise, manage, or oversee the manner in which the services are rendered [Clause 3.16]
- iii) Applicant helps the customer to locate the driver only [Clause 3.14]
- iv) Applicant does not monitored the ride and driver is solely responsible for his services [Clauses 6 and 3.16]
- v) The model is subscription fee and not commission fee. [Clause 4]
- vi) The fare is not determined by the Applicant and same is determined by the West Bengal transport Department
- vii) The driver collect the fare directly from the customer and the method of payment is unknown to Applicant.
- viii) Applicant is not responsible for non-payment of fare by the customer to the driver. [Clause 6]
- ix) Applicant is not a privy of contract between the driver and the customer [Clause 9.3]
- x) Driver is an independent contractor and Applicant and driver works on principal to principal basis. [Clause 11]

CUSTOMER'S TERMS AND CONDITIONS -

- xi) Applicant has no responsibility and liability for losses suffered by the customer due to refusal by driver or breakdown of vehicle.
- xii) Applicant has no responsibility or liability to customer related to any ride or services provided by the driver. [Clause 10 C]

2.10 The Applicant also states that in order to qualify as an electronic commerce operator as per the provisions of Section 2(45) read with Section 2(44) of the GST Act, a person must meet the criteria of owning, operating, and managing a digital or electronic platform and that such platform must be created for the supply of goods or services, or both, over an electronic network, which constitutes electronic commerce.

2.11 In this context, the applicant argues that although the applicant does own, operate, and manage the platform, its role is limited to facilitating the connection between customers seeking transportation services and drivers willing to provide these services. The applicant's platform does not engage in the supply of goods or services, a critical requirement for classification as an electronic commerce operator under the aforementioned definitions. This fact is corroborated by the terms and conditions agreed upon with both customers and drivers, wherein the Applicant explicitly disclaims responsibility for the services provided by the drivers, payment processes, or fare determination. The platform operated by the Applicant merely facilitates the sharing of information between drivers and customers, allowing them to connect for transportation services. However, it does not involve the supply of goods or services over an electronic network.

2.12 Also, the applicability of the provisions of Section 9(5) of the GST Act, 2017, which stipulates that all the provisions of the CGST Act, 2017 shall apply to electronic commerce operator, as if he is the supplier liable to pay tax in relation to the supply of certain services depends on the following conditions namely:-

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

2.13 The Applicant further refers to Merriam Webster Dictionary, in accordance to which the word "through" is used as a function word to indicate means, agency, intermediary such as by means of, by 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 end, to and including

etc. The term "through" in the context of legal interpretation, particularly with respect to provisions like Section 9(5) of the CGST Act, typically implies a level of involvement or facilitation by the electronic commerce operator that is substantial enough to consider the service as being provided via the operator's platform. The term generally implies that the operator is not merely a passive intermediary but plays an active role in facilitating the transaction. This includes significant involvement in the processes of booking, payment handling, and ensuring service delivery. Thus the Applicant argues that the word through in phrase services supplied through electronic commerce operator, in Section 9(5) of the GST Act, gives the meaning that services are to be supplied by means of/by the agency of/from beginning to the end/during the entire period by e-commerce operator. In the instant case, Applicant is merely connecting the driver and the passenger and their role ends on such connection; Applicant do not collect the consideration; Applicant has no control over the actual provision of service by service provider; Applicant do not have the details of the ride. In legal judgments and interpretations, the word "through" suggests that the services provided are done so via the infrastructure, control, or management of the electronic commerce operator. It denotes a deeper integration and responsibility of the operator in the transaction, which may encompass regulatory compliance and even liability for service quality. For an operator to be deemed to supply services "through" its platform, there must be evidence of an integrated role in the transaction process, beyond just connecting the service provider and the customer. Therefore, the interpretation of "through" directly influences the determination of tax liability, depending on the nature and extent of the operator's participation in the service provision.

2.14 Therefore, in the present case, the Applicant's platform being only a facilitator between drivers and customers and not being engaged in or control the actual provision of transportation services, the Applicant's platform cannot be categorized as an electronic commerce operator as defined under Section 2(45) of the GST Act and that the services should not be considered as being supplied "through" the Applicant's platform in the legal sense intended by the GST Act.

3. Submission of the Revenue

The officer concerned from the revenue has express his views as under:

3.1 As per the website of the Yatri Sathi it is stated that "Yatri Sathi is the first open network mobility application designed to offer passengers multi-modal services... This application is built on the common network standards defined by ONDC built on the Beckn protocol (open source)." Thereby it is settled that the predominant feature of this app is to provide transportation services using electronic platform and digital network. This clearly indicates that without using the app the service the Applicant is supposed to provide, is not possible to reach out its recipients. In other words the apps is the gateway for seeking and consuming (as the

case may be) the transportation services for the purpose of which the app has been designed, developed and launched.

3.2 Now in common parlance, electronic commerce or e commerce is understood as the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network. Again, the 'electronic commerce' and "electronic commerce operator" both are defined consecutively in section 2(44) and 2(45) of the GST Act.

3.3 As submitted by the Applicant, the app has been launched on the ONDC platform and is designed as a ride-hailing software as a service (SaaS) platform, also categorized as a Mobility as a service (MaaS) solution in order to facilitate the business transaction of supply of services. It is also admitted by the Applicant that the ownership, management and ongoing operation of such mobile app rest solely on the Applicant. Now, relying upon the conjoint reading of section 2(44) and 2(45), and considering the admitted facts put forward by the Applicant, the Applicant is observed to be covered under the purview of the E-commerce operator as defined in section 2(45) of the GST Act.

3.4 Since it is opined that the applicant falls within the scope and meaning of ECO or E-commerce operator, by virtue of the notification itself the Applicant becomes liable to pay taxes u/s 9(5). There is no denying that the functionality of the app is governed by the GPS or GPRS system so that the driver and the rider can precisely be located in terms of their geographical location/position. The interpretation of Radio taxi squarely matches with the nature of services provided by the applicant. As such in any kind of services of like nature, the positioning of the cab and the customer and connecting them are the most essential part of such service. The 5% GST is applicable under Section 9 (5) of the GST Act, which mandates ecommerce operators such as ride-hailing platforms. It is submitted by the applicant that the app has been launched on the ONDC platform and is designed as ride-hailing software.

3.5 In light of the submissions as noted above, the applicant shall be liable to collect and pay GST on the services supplied by it as ECO.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representatives of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue. The issue before us is to determine the following issues:

- whether the applicant falls under the purview of the E-commerce Operator as defined in section 2(45) of the GST Act;

- whether the applicant shall be deemed to be the service provider under section 9(5) of the GST Act read with notification no. 17/2021-Central Tax (Rate) dated 18th November, 2021 for the Driver services provided by the Driver to the Customer connected by "Yatri Sathi Mobile App";
- whether the applicant shall be liable to collect and pay GST on the services supplied by the Drivers (person who subscribed the app) to the Customers (person who subscribed the app) connected through the App.

4.2 Before we delve into the issues, we may first have a look over the relevant legal provision which is as follows:

By virtue of Notification No. 17/2017- Central Tax (Rate) dated 28.06.2017 [West Bengal State Notification No. 1141 F.T. dated 28.06.2017] read with sub-section (5) of section 9 of the GST Act and Notification No. 14/2017-Integrated Tax (Rate) dated 28.06.2017, as amended from time to time, tax on intra-State as well as inter-state supplies of services by way of transportation of passengers by a motorcab, maxicab, motor cycle, or any other motor vehicle except omnibus shall be paid by the electronic commerce operator if such services are supplied through it.

Further, in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 [West Bengal State Notification No. 1135 F.T. dated 28.06.2017 and Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017], following passenger transport services under Chapter Heading 9964 is taxable 5% (Central tax @ 2.5% and State tax @ 2.5% and Integrated Tax @ 5%):

Transport of passengers, with or without accompanied belongings by-

(a) air conditioned contract carriage other than motor cab;

b) air conditioned stage carriage;

(c) radio taxi.

4.3 It therefore follows that when transport of passengers services by a radio taxi is supplied through an electronic commerce operator, tax on intra-State/ inter-State supplies of such services shall be paid by the electronic commerce operator and all the provisions of the GST 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.

4.4 The applicant submits that it provides services for facilitating business transactions through the "Yatri Sathi" App by way of providing a platform to connect the actual suppliers (cab drivers)

and recipients (passengers intending to use the driver's service). The drivers get registered under the App on payment of membership charges & subscription fee and on the basis of representations and warranties provided by the driver, the applicant enters into an agreement with the driver to enable the driver to provide the service in accordance with the terms and conditions as specified in the respective agreements.

4.5 The applicant has submitted that the "Drivers Terms and Conditions" of the license to use the App establishes that the nature of agreement/contract is limited to providing licence or permission to use the App where the subscriber of the App enters into business deals/transactions on their own with their clients and business associates for supply of services. The terms & conditions governing business contracts of supply such as quality, price etc., are mutually agreed upon by the user i.e. the driver and his client/customer i.e. the passenger who books a ride through the App. The applicant does not have role in controlling such quality, price etc. and is by no means involved either directly or indirectly in supply of services. The applicant is not concerned with the collection of the consideration for such supplies. The fare of a journey is paid by the passenger to the driver himself. The only consideration received by the applicant is the registration & subscription fees that are received from the account holder i.e. the driver and no other commission or so is received by the applicant from the driver. In this context, the applicant emphasizes on clause 11 of the drivers terms and condition, claiming that the drivers are designated as independent contractors and the relationship between the applicant and the drivers operates on a principal-to-principal basis and not agent.

4.6 The applicant further submits that his role is to provide the platform to connect the driver and the customer where the drivers operate independently, and the applicant does not supervise, manage, or oversee the manner in which the services are rendered. The model provides by the App is registration & subscription fee based and no trip-based commission is involved. The fare is not determined by the applicant and same is determined by the West Bengal Transport Department where the driver collects the fare directly from the customer and the method of payment is unknown to applicant. At the same time, the applicant is not responsible for non-payment of fare by the customer to the driver and also has no responsibility and liability for losses suffered by the customer due to refusal by driver or breakdown of vehicle and has no responsibility or liability to customer related to any ride or services provided by the driver. The applicant is not a privy of contract between the driver and the customer and the driver is an independent contractor and the applicant and driver works on principal to principal basis.

4.7 The applicant argues that although it owns, operates, and manages the platform, its role is limited to facilitating the connection between customers seeking transportation services and

drivers willing to provide these services. The applicant's platform does not engage in the supply of goods or services, a critical requirement for classification as an electronic commerce operator as defined in section 2(45) of the GST Act. The platform operated by the applicant merely facilitates the sharing of information between the drivers and the customers, allowing them to connect for transportation services. Therefore, the applicant cannot be regarded as an e-commerce operator.

4.8 In order to examine this issue, it would be apposite to reproduce the provisions of the GST Act where the expression 'electronic commerce' and 'electronic commerce operator' has been defined and also the provision which makes an electronic commerce operator liable to pay tax in respect of certain supplies of services made through it.

"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."

4.9 It thus appears that any person who is an owner or operator of digital or electronic facility or platform or one who manages such platform for supply of goods or services or both, including digital products i.e. a platform which in common parlance is said to be an electronic commerce platform can be said to be an Electronic Commerce Operator. Admittedly, in the instant case,

the applicant is the owner of a digital platform namely the Yatri Sathi App and provides supply of services to the drivers by way of allowing the drivers to use the digital platform against a consideration. The applicant thus fits into the definition and qualifies to be an Electronic Commerce Operator in terms of section 2(45) of the GST Act.

4.10 We now proceed to examine the issue regarding applicability of section 9(5) of the GST Act in the instant case which makes the electronic commerce operator liable to pay tax in relation to the supply of certain services in the way that he is the supplier of such service when such supply of services are supplied through him.

4.11 In this case, the passenger transportation services is provided by a radio taxi. The expression “radio taxi” means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

Thus, the first two arms of the conditions as laid down in Section 9(5) of the GST Act get satisfied, i.e. the instant services are notified by the Government and the supply is intra-state in nature. Now, this issue narrows down to the focal point as to whether this service is supplied through (emphasis added) the electronic commerce operator or not. The word “through” as referred to in Section 9(5) of the GST Act is not explained or defined in the relevant context. Hence that requires to be discussed in detail.

4.12 In this regard, the applicant himself has referred to Merriam Webster Dictionary, in accordance to which the word “through” is used as a function word to indicate means, agency, intermediary such as by means of, by 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 end, to and including etc. The term “through” in the context of legal interpretation, particularly with respect to provisions like Section 9(5) of the CGST Act, typically implying a level of involvement or facilitation by the electronic commerce operator that is substantial enough to consider the service as being provided via the operator's platform. This may include significant involvement in the processes of booking, payment handling, and ensuring service delivery.

4.13 Thus the applicant argues that the word ‘through’ in Section 9(5) of the GST Act, gives the meaning that services are to be supplied by means of/by the agency of/from beginning to the end/during the entire period by e-commerce operator. In the instant case, it is observed that the business model promulgated by the applicant is unique where it merely connects the driver and the passenger and their role ends on such connection and effectively does not have any control over the subsequent business activities as the App platform does not collect the consideration and has no control over the actual provision of service by the service provider. The business

model of the applicant, as submitted during the course of personal hearing, thus found to be as under:

- Fare determination: The fares for the ride are established through periodic notifications issued by the State Government, according to the authority granted under Section 67 of the Motor Vehicles Act, 1988. The Company has no role or involvement in the determination of such fares.
- Payment facilities: The 'Yatri Sathi' app does not specify the payment method by which customers are to pay for services the drivers provide.
- Invoice: The Driver shall be solely responsible for generating and issuing invoices, with the Company having no involvement in the invoicing process or in providing invoices to the recipient.
- Process of payment: The drivers are directly paid by the service recipient and the Company is not aware of the payment methods.
- Type of service model: Yatri Sathi' is a completely subscription-based model application where the Drivers are required to pay Rs XX (inclusive of GST) for open market rides and Rs XX for special zone rides. But no other fees like convenience fees are charged from the customer. Further, the drivers are directly paid by the recipient of the services.
- Influence over driver service quality: [(i) Failure to complete the ride, (ii) Failure to pickup customer at the allotted time, (iii) Instances of reckless or negligent driving, (iv) Involvement in verbal, physical, or any other form of harassment, (v) Violation or non-adherence to the applicable laws] : The company does not take any responsibility for the quality of service being provided by the driver. There shall also be no cancellation charges imposed for incomplete or cancelled rides. Further for any kind of harassment or ill-treatment the company shall not be held liable.

4.14 Thus it is observed that even though the applicant qualifies to be an electronic commerce operator, the supply of services is not made through him but such supply is independent in nature. Therefore, the applicant, though qualifies the definition of being an e-commerce operator, does not satisfy the conditions of Section 9(5) of the GST Act for discharging the tax liability by an electronic commerce operator and hence, is not the person liable for discharge of tax liability under section 9(5) of the GST Act.

In view of the above, we rule as under:

RULING

- Question 1: Whether the Applicant falls under the purview of the E-commerce Operator as defined in sec 2(45) of the GST Act?

Answer: The applicant very much fits into the definition of E-commerce Operator as defined in sec 2(45) of the GST Act and qualifies to be an Electronic Commerce Operator.

- Question 2: Whether the Applicant shall be deemed to be the service provider u/s 9(5) of the GST Act read with notification no. 17/2021-Central tax(rate) dated 18th November, 2021 for the Driver services provided by the Driver to the Customer connected by "Yatri Sathi Mobile App"?

Answer: The supply by the service provider (driver) to his customers (passengers) through Yatri Sathi App does not amount to supply by the Applicant.

- Question 3: Whether Applicant shall be liable to collect and pay GST on the services supplied by the Drivers (person who subscribed the app) to the Customers (person who subscribed the app) connected through the App considering the Applicant as service provider u/s 9(5) of the GST Act read with notification no. 17/2021-Central Tax (Rate) dated 18th November, 2021?

Answer: The applicant does not satisfy the conditions of Section 9(5) of the GST Act for discharging the tax liability by an electronic commerce operator and hence, is not the person liable for discharge of tax liability under section 9(5) of the GST Act.

(DR. TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 10th September, 2024

To,

Natural Language Technology Research
Webel Bhavan, 6th Floor, Module C and D,
Block EP and GP, Moni Bhandar,
Street Number 19, Salt Lake, Sector-V,
North Twenty Four Parganas,
Pin Code-700091

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Senior Joint Commissioner, Salt Lake Charge, North Block, Jalasampad Bhavan, 6, 2nd Avenue, DF Block, Sector 1, Bidhannagar, Kolkata-700064
- (4) The Commissioner of CGST, Howrah Commissionerate, Customs House, M.S. Building, 2nd floor, 15/1, Strand Road, Kolkata-700001
- (5) Office Folder