

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

Advance Ruling No. KAR ADRG 114/2019

Dated: 30.09.2019

Present:

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

1.	Name and address of the applicant	M/s Ascendas Services (India) Pvt. Ltd., 3rd Floor, Discoverer Building, International Tech Park Bangalore, Whitefield Road, Bengaluru 560066
2.	GSTIN or User ID	29AAACT7290C1Z9
3.	Date of filing of Form GST ARA-01	24.04.2019
4.	Represented by	Sri Harish Bindumadhavan, Advocate
5.	Jurisdictional Authority - Centre	Pr Commissioner of Central Tax, Bangalore East Commissionerate
6.	Jurisdictional Authority - State	LGSTO-035A
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 & Rs.5,000/- under KGST Act 2017 vide CIN ICIC19042900373347 dated 22.04.2019

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

1. M/s Ascendas Services (India) Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AAACT7290C1Z9, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

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

Ascendas Services



- a) *Whether the value of bus passes distributed by the applicant to the commuters is to be included in the value of facilitation charges as per section 15(2) of the CGST Act, 2017 and KGST Act, 2017?*
- b) *Whether the supply of service in the hands of the applicant could be classified as merely a supply of facilitation services between BMTC and the commuters?*

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

- (a) The applicant is engaged in the business of operation and maintenance of ITPB. It is submitted that, apart from other services viz. operation and maintenance of electrical systems at common areas, building and civil repairs, maintenance of lifts etc., the Applicant also facilitates the service of transportation to the employees of the tenants of the business park (herein after referred to as 'commuters').
- (b) It is further submitted that, for the provision of transport facilitation service, the Applicant has entered into a contract with Bangalore Metropolitan Transport Corporation (hereinafter referred to as '**BMTC**'). BMTC is the sole public bus transport provider for Bengaluru, serving urban, sub-urban and rural areas and it provides people-centred services and commuter responsive service planning and promotion.
- (c) In order to facilitate the service of transportation, the Applicant receives the following types of bus passes from BMTC for distribution:
- Non AC regular BMTC bus pass; and
 - Combo bus pass which can be used for Non AC and AC buses
- (d) BMTC requires the Applicant to collect a minimum of 50 bus passes from them and for every 50 passes, BMTC would allot 1 bus to the Applicant. This would be in the nature of a chartered bus, which would provide transportation service between designated bus stops and ITPB. BMTC charges tax on the bus passes sold by it to the Applicant, wherever applicable.
- (e) In the case of non-AC regular BMTC bus pass, BMTC does not charge GST since the same is covered in Entry No.15 of Notification No. 12/2017 dated June 28,2017, wherein the transportation of passengers in non -AC carriage under HSN code 9964 is exempt from GST. The said entry is produced hereunder:



Entry No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
15	Heading 9964	Transport of passengers, with or without accompanied belongings, by- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) Non- air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air-conditioned stage carriage.	Nil	Nil

- (f) Whereas for Combo bus pass (i.e. which can be used for non AC and AC buses BMTC charges GST as per Entry No. 8(ii) of Notification No. 8/2017 dated June 28, 2017, wherein the transportation of passengers in air-conditioned coach is taxed at the rate of 5%. The said entry is reproduced as hereunder:

Entry No.	Chapter, Section, Heading.	Description of Services	Rate (per cent.)	Condition
8	Heading 9964 (Passenger transport services)	(ii) Transport of passengers, with or without accompanied belongings by- (a) air-conditioned contract carriage other than motorcab; (b) air conditioned stage carriage; (c) radio taxi. Explanation.- (a) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988); (b) "stage carriage" has the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988)	5%	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]



		(c) "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).		
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- (g) It is submitted that the Applicant charges a separate fee in the form of 'facilitation fee' for arranging this facility for the said commuters. This practice is followed for both Non- AC regular passes as well as combo bus passes.
- (h) The Applicant charges a fee of Rs.300 along with applicable GST at the rate of 18% per bus pass supplied to the commuters. Enclosed herewith is a sample invoice (refer **Annexure 2**) to demonstrate the tax on regular and AC buses and facilitation fee.
- (i) Additionally, the applicant also submits that monthly passes are provided as per the request of the Applicant and the unused passes if any, are returned to BMTC. Thereafter on the basis of the actual number of passes utilized, BMTC raises a consolidated invoice.
- (j) The Applicant as a facilitator of the said service approaches BMTC in case of any deficiency in the provision of the services by BMTC as reported by the commuters.
- (k) From the above submissions, it is evident that the Applicant is no way involved in rendering the service of transportation and instead, the service provided by the Applicant is purely restricted or limited towards the facilitation of such transport service (provided by BMTC.) The Applicant does not hold any specific transport service permits as well.

4. Regarding the issues in question, the applicant submits as under:

4.1 The Applicant contends that he is providing the service of facilitating transportation service for the reasons as under:

(a) The Applicant submits that, in the instant case, it is merely providing the service of facilitation of transportation service by obtaining bus passes from BMTC and providing the same to the commuters.

(b) The commuters are receiving two services namely,



- i. Transportation service being provided by BMTC; and
 - ii. Facilitation services being provided by the Applicant by making available the bus pass to the employers at their respective workplaces
- (c) It is submitted that the Applicant charges a facilitation fee of Rs. 300 and in accordance with Entry No. 11 (ii) of the Notification No. 11/2017 dated June 28,2017 under HSN code 9967 as 'Supporting services in transport', along with applicable GST at the rate of 18%. It is also important to note that the Applicant issues a separate invoice for such facilitation fees.
- (d) It is further submitted that BMTC owing to the practical difficulty of raising invoices in the name of each individual passenger who is the ultimate beneficiary of the transportation service, raised a consolidated invoice in the name of the Applicant.
- (e) It is submitted that apart from the facilitation charges, the Applicant only receives the actual amount incurred to obtain such bus passes for distribution i.e. under this arrangement, the Applicant only does a cost to cost recovery of the amount spent on obtaining such bus passes for distribution. Notably, such an activity of recovery of actual cost of bus pass is merely an act without any quid pro quo.

4.2 The Applicant contends that he is an intermediary with respect to the supply of bus passes for the following reasons:

- (a) In the instant case, as explained in the aforesaid paragraphs, the Applicant acts as a pass-through by mediating the transportation service provided by BMTC. The supplier being BMTC provides transportation service to the commuters, who are the recipients of such service by BMTC.
- (b) The Applicant believes it is an Intermediary with respect to the supply of bus pass on the bases of the definition of 'intermediary' as per section 2(13) of the IGST Act, 2017, which is reproduced as follows:
“(13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account”.



(c) On a perusal of the above definition, it is crystal clear that the applicant is an intermediary as it arranges the service of transportation by providing the bus passes to the commuters and does not provide transportation service on its own account.

(d) It is further submitted that the definition of intermediary services was same under the erstwhile indirect regime as well, reference can also be drawn to the Education Guide issued by Central Board of Excise & Customs with regard to Taxation of services, which provides the factors for determining a person as an intermediary. The relevant extract is as follows:

"In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: *An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.*

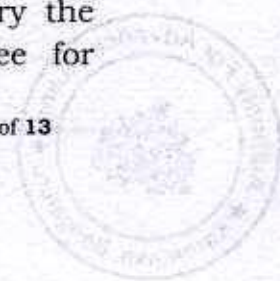
Separation of value: *The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging, It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".*

Identity and title: *The service provided by the intermediary on behalf of the principal is clearly identifiable."*

(e) On the basis of the above, the Applicant has satisfied the factors as stated below:

Nature and Value: The Applicant in the instant case, does not alter the nature of service provided by BMTC. The Applicant merely recovers the cost of the bus pass from the commuters and the same is paid to BMTC. Essentially, BMTC provides transportation service by issuing bus passes, a service which is consumed by the commuters utilizing the bus passes.

Separation of value: It is submitted that, being an intermediary the Applicant is receiving consideration in the form facilitation fee for



arranging the transportation service by making the bus passes available to the commuters. The value of this service is clearly identifiable and recovered separately from the service recipients. This is also evidenced from the invoice.

Identity and Title: BMTC is responsible for providing the buses and carrying out the transportation service. The responsibility of the Applicant is towards facilitation of the same. The same can be substantiated by the agreement between BMTC and the Applicant.

4.3 The applicant contends that the Agreement between the Applicant and BMTC provides for arranging transportation service for the following reasons:

(a) The Applicant intends to bring to your kind attention that as per the agreement between the Applicant and BMTC, the Applicant has merely agreed to facilitate the transportation service and assist the commuters to obtain the passes. Relevant extract of the agreement is as follows:

"the second party is desirous of arranging for transport for the staff employed with it and by the various corporate clients of the International Tech Park Bangalore (ITPB) (staff of the tenants of the Park) from different parts of Bangalore city as mentioned in the Schedules, to and from ITPB, located at Whitefield Road, Bangalore 560066. The First party has agreed to arrange the transport facility to the staff of tenants of the Park (the said purpose) subject to the terms and conditions"

(b) The Applicant wishes to submit that bus passes are issued by BMTC only on the request, of the Applicant (depending on the demands raised by the commuters). Further, as mentioned earlier the unused passes are returned by the Applicant to BMTC, thereafter, BMTC issues invoices only for the actual passes utilized. This fact is also substantiated by clause 12 of the agreement which is reproduced as under:

"12. Monthly passes shall be provided as per request of the Second Party. The Second Party shall ensure that all unused passes for the month are returned to the First Party on or before the 10th of each month. The First Party shall prepare bills after taking into account all the returned passes and only for the actual number of passes utilized by the Second Party."

- (c) In terms of the aforesaid clause, the Applicant has therefore, agreed to facilitate or arrange transport facility and is merely delivering the bus passes to the commuters to avail the same.
- (d) To further substantiate, the Applicant states that the Applicant does not possess any transport service permits. Thus, the Applicant merely facilitates transport services between BMTC and the commuters.

4.4 Regarding the value to be adopted by the Applicant for the service of facilitating transportation, the applicant submits as under:

- (a) The Applicant submits that as per section 15 of the CGST Act, 2017 value of supply is defined as:

“(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.”

- (b) On a perusal of the above, the values of the service of arranging transportation is the value of facilitation fee charged by the Applicant. The supply of bus pass to avail transportation service is a supply in the hands of BMTC, on which BMTC is levying GST. The Applicant further submits that for providing the service of facilitating transportation for the commuters, the applicant is charging a facilitation fee on which applicable GST is being discharged at the rate of 18% and that the same should be the value as per section 15 of the CGST Act, 2017.

- (c) On further analysis of section 15, the Applicant analyses sub-section (2) of section 15 of the CGST Act, which provides for the amounts and other ancillary costs to be included in the value of supply. The extract of the same is provided as follows:

“(2) The value of supply shall include –

(a) any taxes, duties, cesses, fees and charged levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Service Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and

not included in the price actually paid or payable for the goods or services or both;

(c) Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods of supply of services;

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation, – For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.”

(d) However, in the instant case, the value of bus pass is not covered under any clause of section 15(2) as stated above, the supply of bus pass being a supply for BMTC, will not be covered under clause (b) of the said section. The Applicant is in the business or service or arranging transportation service by sourcing bus pass issued by BMTC to the commuters.

(e) On the basis the above discussions and submissions, the applicant states that he understand that the value of bus passes distributed by the Applicant to the commuters is not to be included in the value of facilitation charges in terms of section 15(2) of the CGST Act and KGST Act.

5. FINDINGS & DISCUSSION:

5.1 The nature of the transaction is examined and found that the applicant is in agreement with the Bangalore Metropolitan Transport Corporation for the provision of transportation facilitation service and the applicant receives the bus passes from BMTC for distribution. The BMTC requires the applicant to collect a minimum of 50 bus passes from them and for every 50 bus passes, BMTC would allot 1 bus to the applicant. This would be in the nature of a chartered bus which would provide transportation service between designated bus stops and ITBP. The BMTC charges tax on the bus passes sold by it to the applicant, wherever applicable.



5.2 From the above, it is seen that the service is that of services of a chartered bus and the consideration is charged by the BMTC in the form of bus passes. The value of 50 passes is the consideration for the provision of service provided by the BMTC. Regarding the recipient of service, it is seen that the consideration for this service is payable by the applicant and clause (93) of section 2 of the CGST Act, makes it amply clear that the person who is liable to pay the consideration is the recipient of service and in this case, the applicant is liable to pay the consideration and hence would be the recipient of service under the GST Act.

5.3 The services provided by BMTC to the applicant are covered under SAC 996413 – Non Scheduled Local Bus and Coach Charter Services. The services are provided by the BMTC to the applicant and the applicant collects the consideration of the bus passes plus the service charges and provides the same services.

5.4 In the pertinent case, the following points are observed in the agreement between the applicant and BMTC :-

(a) The applicant is desirous of arranging transport for the staff employed with it and by the various corporate clients of the International Tech Park, Bangalore (ITPB) from different parts of Bangalore City to and from ITPB. The BMTC has agreed to arrange the transport facility to the staff of tenants of ITPB.

(b) The BMTC has agreed to allot and provide the requisite number of buses for the said purpose at the rate of 1 bus for every 50 monthly bus passes taken by the applicant from BMTC. BMTC would send the bills to the applicant on or before the 10th days of the succeeding Calendar month calculated as per the applicable rate for each category of monthly passes demanded by BMTC. The bill amount shall be paid on or before the 15th of the same month. In case the bills are not settled together with interest within 1 month from the date the bills become due, the BMTC reserves the right to stop the service of the Chartered buses.

(c) Monthly passes shall be provided as per the request of the applicant and the applicant shall ensure that all unused passes for the month are returned to BMTC on or before the 10th of each month. The BMTC shall prepare the bills after taking into account all the returned passes and only for the actual number of passes utilised by the applicant.



(d) All commuters travelling in the buses engaged by the applicant shall possess identification cards and the monthly passes / casual passes Issued by the applicant.

(e) When any bus does not turn up as scheduled, the BMTC shall be liable to pay Rs.500-00 per default, which will be deducted from the monthly bills payable to them.

(f) In case of non-operation of any route because of reasons attributable to BMTC, the applicant shall be entitled to recover from the bills at the rate of Rs.2,000-00 per bus per day.

(g) In the event BMTC ceases to provide the transport services wholly or in part without the applicant's agreement, the applicant shall be entitled to the cost and expenses incurred in providing alternate transport services until such time the BMTC recommences the services or the agreement is terminated, whichever is earlier"

5.5 All these points point to the fact that the BMTC is providing services to the applicant and not to the actual passengers. The default clauses also point to the fact that the applicant is in receipt of the services and the monthly passes is only for identification and calculation of the value of services provided by BMTC to the applicant.

5.6 Coming to the services provided by the applicant to the actual passengers, the applicant is providing transportation services and the applicant is required to arrange alternate services to the commuters in case BMTC ceases to provide the transport services wholly or in part.

5.7 Further, the bills issued by the applicant are verified and found that the bills are issued to the Companies in the ITPB and not to the individual commuters. The applicant is valuing the service only to the extent of the additional amount charged as facilitation charges and collecting the balance amount as monthly pass amount and paying the taxes only to the extent of facilitation charges.

5.8 The commuters or the companies are not party to the contract between the applicant and BMTC and the applicant is providing the services after obtaining the same from BMTC. The contention of the applicant that he is an intermediary is incorrect in that the applicant is receiving the services provided by BMTC for the aforesaid reasons and the applicant is providing the services to his clients.



5.9 The definition of "intermediary" as per section 2(13) of the IGST Act, 2017 reads as under:

"(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

5.10 To be covered under the definition of "intermediary" the applicant must facilitate the supply of services by the BMTC to the commuters and in the pertinent case, it is the applicant who is receiving services from BMTC and providing services to the commuters and all are principal to principal in nature and the applicant is neither the agent of BMTC or the commuter.

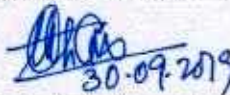
6. Regarding the value of services, the total amount charged to the service recipient by the applicant would be the value of services supplied as per Section 15 of the CGST Act, 2017. Hence the value of the monthly passes issued plus the facilitation charges charged by the applicant and such other amounts which form the part of the value of supply as specified in Section 15 would be the value of supply of the services provided by the applicant to the commuters.

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

RULING

1. The Value of the bus passes distributed by the applicant to the commuters and the facilitation charges is to be included in the value of services provided by the applicant.
2. Regarding the second question of "whether the supply of service in the hands of the applicant could be classified merely a supply of facilitation service between BMTC and the commuters", the answer is in the "negative".




30.09.2019

(Harish Dharnia)
Member

Place: Bengaluru,
Date: 30.09.2019

To
The Applicant

Ascendas Services


(Dr. Ravi Prasad.M.P.)
Member

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Pr Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO - 035A, Bengaluru.
5. Office Folder