

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

Advance Ruling No. KAR ADRG 79/2019

Date: 24-09-2019

Present:

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

1.	Name and address of the applicant	M/s. Sharma Transports, No.328, Sangeetha Bhavan, Tipu Sultan Palace Road, Kalasipalayam, Bengaluru - 560 002.
2.	GSTIN or User ID	29ADPFS9020E1ZR
3.	Date of filing of Form GST ARA-01	08.01.2019
4.	Represented by	Sri V.Sudhindranath, Advocate
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore South Commissionerate
6.	Jurisdictional Authority - State	LGSTO - 110, 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 vide CIN BIN18122900092012, dated 12.12.2018. & Rs.5,000/- under KGST Act vide CIN SBIN18122900095536 dated 13.12.2018.

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

1. M/s. Sharma Transports, No.328, Sangeetha Bhavan, Tippu Sultan Palace Road, Kalasipalyam, Bengaluru - 560 002, having GSTIN number 29ADPFS9020E1ZR have filed an application for Advance Ruling under Section 97 of the CGST Act,2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a partnership firm engaged in the business of transportation of passengers and other ancillary & related services. The applicant also renders Employee transportation service to various corporate Companies using buses.

3. The applicant submitted that they have entered into a Composite "Operation and Maintenance of Employee Commutation Vehicles and Transportation Services Agreement" with M/s. Volvo Group India Pvt. Ltd., (hereinafter referred to as Volvo) in which the applicant is responsible for not only providing the buses but also maintaining them and running the same towards Employee Commutation. Towards the same, the applicant is paid a minimum Fixed Cost and a Variable cost, depending on the number of kilometers run.

4. The applicant further submitted that the applicant is the owner of the buses and takes "Private Service Vehicle" permits in the name of M/s. Volvo (Private Service Vehicle is a type of permit where bus is used exclusively for the Permit Holder's employees). In the instant case, the buses are used exclusively for M/s. Volvo. The applicant picks up of employees of the Client from respective pick up points and drops them in the Client's factory/office and vice versa. The applicant is responsible for transportation of employees and also the maintenance of the buses.

5. In view of the above, the applicant seeks advance ruling in respect of the following question:

Whether the revenue earned through the "operation and maintenance of employee commutation vehicles and transportation services agreement" be classified under heading passenger transport services with SAC 9964 (vi) liable to tax at 5% (CGST + SGST) without input or 12% (CGST + SGST) with input credit or under rental services of transport services with SAC 9966 (i) liable to tax at 5% (CGST + SGST) without input or 12% (CGST+SGST) with input credit or any other rate.

FACTS OF THE CASE AND APPLICANT'S INTERPRETATION OF LAW

6. The applicant submitted that they enter into a composite "operation and maintenance of employee commutation vehicles and transportation services agreement" in which the applicant is responsible for not only providing the buses but also maintaining them and running the same towards employee commutation. The applicant is the owner of the buses and takes "Private Service Vehicle" Permits in the name of the Client. The applicant picks up of employees of the client from respective pick up stops and drop them in the client's factory/office and vice versa. The applicant further submitted that their services ideally fall under the Heading Passenger Transport Services with SAC 9964 (vi), liable to tax at 5% (CGST+SGST) without input or 12% (CGST+SGST) with Input Credit.

PERSONAL HEARING: / PROCEEDINGS HELD ON 28.02.2019

7. Sri. Sudhindranath, Advocate and authorized representative of the applicant appeared for personal hearing proceedings held on 28.02.2019 and reiterated the facts narrated in their application.

8 FINDINGS & DISCUSSION

8.1 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by Sri. Sudhindranath, Advocate and authorised representative of the applicant, during the personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

8.2 The applicant seeks advance ruling with regard to classification of their service as to whether the said service falls under Passenger Transport service with SAC 9964(vi) or under Renting of Transport Vehicle to carry passengers with SAC 9966(i). We proceed to examine the said classifications, one at a time.

8.3 The applicant is providing buses, in terms of agreement, to pick up employees of their client from respective pick up stops and drop them in the client's factory/office and vice versa. The applicant is charging rental charges at the rate of Rs.1,40,315/- per month per vehicle (Fixed cost @ Rs.84,504/- + Variable cost @ Rs.55,809/-) for minimum operation of 2,640 kms and 22 working days in a calendar month from the M/s Volvo (client) for providing transportation services. Additional kilometers over and above 2,640 kms, the charges shall be Rs.21/- per km as per the variable cost. The price was fixed when the cost of HSD at the rate of Rs.66.35 per liter as on April 2018.

8.4 The services under SAC 9964 are related to "Passenger Transport Services". Entry No.8 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 is related to the said service and consists 7 sub entries, out of which entry numbers i, iii, iv, v are not relevant to the instant case. Thus we examine entry number 8(ii) of the said Notification. The said deals with "Transport of Passengers" by contract carriage, stage carriage and radio taxi. In the instant case, the applicant is providing the buses, by taking the permits in the name of their client, which are neither contract carriages, stage carriages nor radio taxis. Therefore the services of the applicant are not covered even by this entry. Further,



the applicant claims that sub-entry (vi) of entry 8 of the said notification is applicable to them. It is observed that the said entry pertains to the "Transport of Passengers" by motorcab.

8.5 The Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 stipulates that the words "Contract Carriage", "Stage Carriage" and "Radio Taxi", have the meaning assigned to them in clause (7) of Section 2 of the Motor Vehicle Act, 1988. Hence we draw the attention to the said Motor Vehicles Act 1988 for the definition / meaning of "Motorcab". In terms of Section 2(24) of the Motor Vehicle Act 1988 "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 applicant is providing the services by buses, which can accommodate more than six persons. Therefore the applicant is not engaged in providing transport services by motorcabs. Thus it is clearly evident the said entry 8(vi) does not apply to the applicant.

8.6 We now proceed to examine the explanatory notes related to classification of services. Services with SAC 9964, specifically 996411 covers Local land transport services of passengers by bus. Further Entry (iii) to the said SAC 996411 includes "passenger transportation services over pre-determined routes on a pre-determined schedule within the confines of a single city or group of contiguous cities, for a specific segment of users, e.g., colleges or enterprises", which clearly covers the activity of the applicant. In view of the above, sub-entry 8(vii), which is the residual entry, is applicable to the instant case.

8.7 It is also observed from the said explanatory notes related to classification of services that the SAC 9966 covers "*Rental services of transport vehicles with or without operators*" and specifically the SAC 996611 covers "*Rental services of road vehicles including buses, coaches, cars, trucks and other motor vehicles, with or without operator.*" The said services include "*rental of buses or coaches, trucks and other motorized freight vehicles, with/without operators for a period of time, not generally dependent on distance. The renter defines how and when the vehicles will be operated, determining schedules, routes, and other operational considerations.*" In the instant case the applicant (renter) does not define how and when the vehicles will be operated and also does not determine the schedules, routes and other operational consideration. The client of the applicant decides the same and accordingly the applicant operates the buses. Therefore the services being provided by the applicant are not covered under the SAC 9966.


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

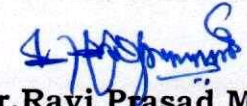
R U L I N G

1. The services provided by the applicant to M/s Volvo Group India Pvt. Ltd., are "Passenger Transport Services" covered under Heading 9964 and this service is covered under the entry 8(vii) of Notification No.11/2017-Central

Tax (Rate) dated 28.06.2017 as amended and are taxable at 9% under the CGST Act, 2017 and 9% under the KGST Act, 2017 .




24.09.2019
(Harish Dharnia)
Member


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

Place : Bengaluru,

Date : 24.09.2019

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO -110, Bengaluru.
5. Office Folder