



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No. 9/AP/GST/2020 dated:05-05-2020

1	Name and address of the applicant	M/s. Andhra Pradesh State Road Transport Corporation, APSRTC,RTC House,1st Floor, PNBS, Vijayawada-520013, Krishna District, Andhra Pradesh
2	GSTIN	37AAGFA3527J2ZF
3	Date of filing of Form GSTARA-01	15.11.2019
4	Date of Personal Hearing	19.12.2019
5	Represented by	G. Venkata Ramana Rao.
6	Jurisdictional Authority - State	Assistant Commissioner (ST) Krishnalanka Circle, Vijayawada II Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(e) Determination of the liability to pay tax on any goods or services or both

ORDER

(under sub-section (4) of section 98 of Central Goods And Service Tax Act, 2017 and under sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed under Section 97 of the Central Goods & Services Tax Act, 2017 and Andhra Pradesh Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s Andhra Pradesh State Road Transport Corporation, APSRTC, RTC House, 1st Floor, PNBS, Vijayawada-520013, Krishna District, Andhra Pradesh (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. **Brief Facts of the Case:**

Andhra Pradesh State Road Transport Corporation is public sector undertaking established under RTC Act, 1950 under the Act of Parliament and the capital/fund invested in the APSRTC is wholly by Central/State Government. It is engaged in transportation of passengers both as stage carriers and contract carriers and also in transportation of goods.

The applicant had filed an application in form GST ARA-01, dated 15.11.2019, paying the prescribed amount of fee for seeking Advance Ruling.

4. **Questions Raised Before the Authority**

The applicant raised the following questions and requested to pass ruling on the following issues.

1. Whether the services of APSRTC giving Non Air Conditioned Buses on contract for the occasions of marriages, functions etc, for transportation of employees and students of other organizations/Department, for different purposes like, transportation of passengers to Sabarimala, transporting of public to the places where meetings conducted by political parties and to the places like Polavaram project, are covered under contract carriage as specified vide Serial No 15 of notification 12/2017;
2. Whether the APSRTC, being a public sector undertaking, whose books of accounts are subjected to CAG of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, is it required to file reconciliation statement in FORM-GSTR-9C as per proviso to Section 35(5) of the GST Act,2017.

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Krishnalanka Circle, Vijayawada II Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the jurisdictional officer concerned stating that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.



5. Record of Personal Hearing:

The authorized representative of the applicant, Sri G. Venkata Ramana Rao appeared in person for Personal Hearing held on 19.12.2019 and he reiterated the submissions already made in the application and requested to pass necessary orders.

6. Discussion and Findings

6.1 We have gone through the case records of the application written and oral submissions at the time of Personal Hearing carefully. The applicant informed that they are a public sector undertaking established under RTC Act, 1950 under the act of Parliament and the capital/fund invested in the APSRTC is owned wholly by Central/State Government and engaged in transportation of passengers both as stage carriers and contract carriers and also in transportation of goods. The matter represented before us i.e. the activity of providing non Air conditioned buses on contract attract GST or otherwise and also applicability of FORM GSTR-9C, is examined.

6.2 In terms of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 (sr.no.15), the following services are exempt from GST Services by way of transportation of passengers (Heading 9964):

Transport of passengers, with or without accompanied belongings, by

(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire;

Thus, it is to be seen that only transport of passengers by a Non Air conditioned contract carriage other than radio taxi excluding tourism, conducted tour, charter or hire, is exempt from GST.

6.3 Definition of Contract Carriage: Contract carriage is neither defined in the Act nor in the notification no.12/2017-Central Tax (Rate). However, as per Section 2(7) of The Motor Vehicles Act,1988, 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum—



(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

(i) a maxicab; and

(ii) a motorcab notwithstanding the separate fares are charged for its passengers;

6.4 The applicant claims that the non Air conditioned bus contracts entered by them are contract carriages on hire and hence falls under **Serial no.15** in Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017. But as per the definition of Contract carriage given in para 6.3 above a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum.

But as per serial no.15 in Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire is exempt from GST

From the above it can be concluded that case of the applicant clearly doesn't fall under serial no.15 in Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017. So the services offered by the applicant are covered by Sl.no. 10 of notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 i.e., 'Rental Services of transport vehicles'.

6.5 Charge of GST on rental services

In terms of notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by notification no. 20/2017- Central tax (Rate) dated 22.08.2017, notification no. 31/2017- Central tax (Rate) dated 13.10.2017, notification no. 20/2019- Central tax (Rate) dated 30.09.2019, wherein Sl.no. 10, (i) Rental Services of transport Vehicles (Heading 9966) attracts GST at the rate of 2.5% or 6% or 9% CGST. Identical rate would be applicable for SGST also, taking the effective rate to 5% or 12% or 18%.



However, the rate of 5% is subject to the condition that the cost of fuel is included in the consideration charged from the service recipient and the credit of input tax charged on goods and services used in supplying the service other than the input tax credit of input service in the same line of business has not been taken.

The explanation to the notification further clarifies that *it shall mean that,-*

- (a) *credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and*
- (b) *credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made there under.*

6.6 Applicability of FORM GSTR-9C

Being a public sector undertaking the applicant wanted to know whether he is required to file reconciliation statement in FORM GSTR-9C. The issue before us is to tell about the applicability of GSTR-9c to the applicant. However before going into this if we look at the question on which the advance ruling can be sought under the Act.

According to Section 97(2) of the act: *The question on which the advance ruling can be sought are specified as under:*

- (a) *classification of any goods or services or both;*
- (b) *applicability of a notification issued under the provisions of this Act;*
- (c) *determination of time and value of supply of goods or services or both;*
- (d) *admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) *determination of the liability to pay tax on any goods or services or both;*
- (f) *whether applicant is required to be registered;*
- (g) *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.*



From the above it is clear that the applicant's question doesn't fall under any of the clauses mentioned under sub section 97(2).

6.7 In view of the legal provisions governing the taxability of rental services, the information furnished by the applicant is examined and found that;

- The applicant is registered with GST as a Supplier of services ;
- The applicant is renting the Non Air conditioned buses under the name & style M/s Andhra Pradesh State Road Transport Services for the occasions of marriages, functions etc ,for transporting of employees and students of other organizations/departments, for transporting of passengers to Sabarimala, for transporting of public to meetings conducted by political parties and to places like Polavaram project etc. Therefore, it is clear that the applicant is providing rental services and thus fits under Serial No 10 of Notification no.11/2017-Central Tax (Rate) dated 28.06.2017;

The rate of tax on the rental services where the cost of fuel is included in the consideration charged from the service recipient is 5%/12%subject to satisfying the conditions as prescribed under notification no. 11/2017 - CT (Rate) dated 28.06.2017 as amended by notification no. 20/2017-CT (Rate) dated 22.08.2017, notification no. 31/2017- Central tax (Rate) dated 13.10.2017, notification no. 20/2019- Central tax (Rate) dated 30.09.2019 as detailed in para 6.5 above;

In case, the said conditions are not satisfied, the rate of GST is 18% (9% CGST+9% SGST) and the applicant being the provider of rental service has to pay the said tax;

The applicability of GSTR-9C cannot be answered as per Section 97(2) as detailed in para 6.6 above;

Accordingly we pass the following order.

RULING

Query: Does the contract services of the applicant are covered under contract carriage as specified vide serial no 15 of notification 12/2017; What is the rate of tax payable?

Answer: As per the information given by the applicant, he is rendering rental services and his tax liability under GST law is as detailed in the para 6.7 above.



Query: Does the applicant require to file reconciliation statement in FORM GSTR-9C?

Answer: As per section 97(2) this question doesn't fall under the scope of advance ruling as detailed in the para 6.6 above.

**Sd/-D.RAMESH
(MEMBER)**

**Sd/-M.SREEKANTH
(MEMBER)**

//t.c.f.b.o//



Assistant Commissioner(ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

M/s Andhra Pradesh State Road Transport Corporation, RTC House,
PNBS, Vijayawada - 520013, Krishna District, Andhra Pradesh
(Registered Post)

Copy to

1. The Assistant Commissioner of State Tax, Krishnalanka Circle,
Vijayawada-II Division **(Registered Post)**
2. The Superintendent, Central Tax, Amaravathi Capital City Range,
Amaravathi Central GST Division, Guntur. **(Registered Post)**

Copy Submitted to

1. The Chief Commissioner (State Tax), o/o Chief Commissioner of State Tax,
Government of A.P., Eedupugallu, Vijayawada
2. The Chief Commissioner (Central Tax), o/o Chief Commissioner of
Central tax & Customs, Visakhapatnam Zone, GST Bhavan,
Port area, Visakhapatnam -530035. A.P. **(Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act 2017, with in a period of 30 days from the date of service of this order

