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18/09/19

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18/7/19

GOVT. OF NCT OF DELHI
OFFICE OF THE DELHI AUTHORITY FOR ADVANCE RULING
DEPARTMENT OF STATE TAX
7th Floor, Vyapar Bhawan, I.P. Estate, New Delhi-110002

Annexure-A		
Authority for advance ruling (AAR) – Details of Orders Passed		
Name of State/Union Territory:		
1	2	3
1	Order No. & Date	09/DAAR/2018 dated 28.06.2019
2	Name of the Entity	M/s TUI India Private Limited, Suite No. 10A, K-1, First Floor, Govind Mansion, H-Block, Connaught Circus, New Delhi-110001
3	Product/Services involved	Travel arrangement, tour operator and related services
4	Brief issue (2-3 Sentences)	(1) Whether in case of 'Accommodation Only' services GST will be charged @ 18% on the Service Fee/Convenience Fee charged by the Company, if the Company satisfies the conditions of Pure Agent? (2) Applicant is also seeking any option available to a 'Tour Operator' to either charge GST @ 5% (with no ITC) or charge GST @ 18% (with full ITC)?
5	Section /Rules of the Act/Rules involved on which ruling issued	(1) The applicant is required to collect/deposit GST under Section 9(1) of the CGST Act, 2017 on the amount received by them from the clients on the value of 'hotel accommodation' service, while acting as an agent under Section 2(5) of the said Act being "taxable person" defined under Section 2(107) of the said Act and "supplier" defined under section 2(105) of the said Act. (2) The 'tour operators services' are covered under entry (i) of S. No. 23 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 and they are required to pay GST @ 5% (2.5% CGST + 2.5% SGST) (without ITC) subject to fulfilment of conditions and they are not covered under entry (ii) of the S. No. 23 of the said Notification before 25.01.2018 and entry (iii) of S. No. 23 of the said Notification from 25.01.2018 and hence option to pay GST @ 18% (9% CGST + 9% SGST) (with ITC) is not available to them.
6	Category as per section 97(2)	(b), (e)

Encl: Copy of Order No. 09/DAAR/2018 dated 28.06.2019

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(Daniel Masih)
Registrar (DAAR)

**DELHI AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
DEPARTMENT OF STATE TAXES
7TH FLOOR, VYAPAR BHAWAN, IP ESTATE, NEW DELHI -110002**

ADVANCE RULING NO. 09/DAAR/2018 dated 28.06.2019

(In Application No: 09/DAAR/2018 dated 05.02.2018)

Name and Address of the Applicant	:	M/s TUI India Private Limited, Suite No. 10A, K-1, First Floor, Govind Mansion, H-Block, Connaught Circus, New Delhi-110001
GSTIN of the Applicant	:	07AACT7808M1ZT
Date of Application	:	05.02.2018
Clause(s) of Section 97(2) of CGST/DGST Act, 2017, under which the question raised	:	(b) Applicability of a notification issued under the provisions of the Act. (e) Determination of the liability to pay tax on any goods or services or both
Date of hearing(s) for admission	:	09.03.2018, 06.04.2018, 20.04.2018
Date of final hearing(s)	:	27.04.2018
Jurisdictional Authority (Centre)	:	GST South, EIL Annexe Building, Bhikaji Cama Place, New Delhi - 110066
Date of receipt of written submissions from applicant	:	06.04.2018, 20.04.2018, 01.05.2018
Date of receipt of comments from (Centre)	:	Not Received
Date of receipt of comments from (State)	:	Not Received
Present for the Applicant	:	Shri Gaurav Gupta, CA and Rakesh Khanna, CA
Present for the Revenue (Centre)	:	None
Present for the Revenue (State)	:	None

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Despatch No ⇒ 897/DAAR/2019/28.06.2019
Commissioner (State) through Member DAAR (State)

Statement of Facts:

1. The applicant, M/s. TUI India Private Limited is mainly engaged in the business of outbound tours. The applicant specializes in package tours, air tickets, rail tickets, accommodation, transport, visa and tailor made holidays for tourists visiting overseas and within India. The applicant provides a combination of these services or single service, as per the client's requirement. It provides services to both B2B and B2C clients.

Question No. 1: 'Accommodation Only' services:

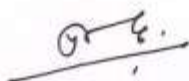
2. The applicant has entered into contracts with various online / offline players (Hotel Aggregators) for buying hotel rooms. The applicant, amongst other tour services, also provides Hotel only ('Accommodation Only') services to B2B Agents i.e. other travel agents & tour operators (B2B Clients). The applicant does online booking of Hotel Rooms from the Hotel Aggregators as per its client's requirements & makes payments for the same on behalf of the B2B Clients.

3. These can be summarized as follows:

- i. The applicant entered into contract with different Hotel Aggregators (Suppliers).
- ii. The applicant also entered into contract with B2B Agents (Customers) / B2C to provide Hotel booking services.
- iii. The applicant provides Hotel booking services to B2B Agents / B2C and acts as their Pure Agent.
- iv. The applicant raises bills on B2B Agents / B2C showing Hotel Cost & its Commission / Fee separately in the invoice and charge GST @ 18% only on its Commission / Fee component.
- v. The Hotel Aggregators raise consolidated bill in the name of applicant mentioning the respective name of B2B Agent / B2C who used these Hotel services.
- vi. The applicant does not use for its own interest hotel services so procured.

4. A view suggested by some consultants that 'Accommodation Only' services are not covered under the above entry of 'Tour Operator' services and hence the GST rate of 5% (with no ITC) will not be applicable and rate of 18% GST will be applicable.

5. The rationale provided for such a view is the strict language of condition no. 2 used in the Notification No. 11/2017 – Central Tax (Rate) dated 28th June, 2017 in the S. No. 23 Heading 9985 (Support services), which states that the bill should be inclusive of accommodation and transportation charges and where 'Accommodation Only' services are provided, the second condition is not satisfied, hence the GST rate of 5% (with no ITC) cannot be applied.







Question No. 2: 'Tour Operators' services:

6. The applicant also acts as tour operator and provide various kinds of tour operator services. Under Tour Operator category GST rate is 5% (with no ITC), because of this applicant is not able to pass on the complete GST input benefit to its customers and at times it is not feasible for the applicant to give competitive quotes.
7. As per the above stated notification, to apply the GST rate of 5%, following two conditions need to be satisfied:
- Credit of input tax charged on goods and services used in supplying the service has not been taken.
 - The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour.
8. If one or both of the above stated conditions are not satisfied or say if the company wants to take the GST input Credit and then charge GST at full rate of 18% on its total bill.
9. Accordingly, this option of charging either GST @ 5% (with no ITC) or GST @ 18% (with full ITC) should be available to the applicant.

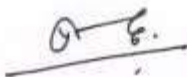
Details of Question(s) on which Advance Ruling is requested:

Question No. 1:

10. Whether in case of 'Accommodation Only' services, GST will be charged @ 18% on only the Service Fee / Convenience Fee charged by the applicant, if the applicant satisfies the following conditions of Pure Agent :
- It acts as a Pure Agent of its B2B Client to incur expenditure or costs for supply of hotel services.
 - It books the hotel services purely as per the requirements of the B2B client and does not do so on its own accord.
 - It does not use for its own interest hotel services so procured. However, it gets the bill from Hotel in its own name.
 - It receives only the actual amount incurred to procure the hotel services, in addition to the amount received for the services it provides on its account.

Question No. 2:

11. Is there any option available to a 'Tour Operator' to either charge GST @ 5% (with no ITC) or charge GST @ 18% (with full ITC)







Views of the Applicant:

Question No. 1: 'Accommodation Only' services:

12. The applicant satisfies the above stated conditions of Pure Agent, accordingly, it should charge GST @ 18% on only its Service Fees / Convenience Fee.

Question No. 2: 'Tour Operators' services:

13. Based on the interpretation of the notification prescribing GST rates for Tour Operators, an option of charging either GST @ 5% (with no ITC) or GST @ 18% (with full ITC) should be available to the applicant in order to pass on the free flow of GST input benefit to its customers.

14. The applicant would be providing an online platform for providing facilitation services for helping passengers / end customers (B2B / B2C clients) to make travel bookings. The applicant will collect its service fee in addition to the hotel accommodation charged by the overseas vendor/ hotel from the end customer, in the capacity of a 'pure agent' of the end customer. The charges shall be remitted 'as is' to the vendor / hotel located outside India.

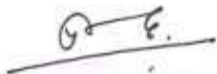
15. In case of 'Hotel Accommodation only' service, it is satisfying all the conditions of Pure Agent then, it should be applying GST only on the service fee it is charging and not on the total invoice value.

16. The applicant has also submitted the following documents :

- i. Draft Invoice issued by them for 'Hotel Accommodation Only' Services,
- ii. Agreement with M/s DOTW, UAE,
- iii. Draft Supplier Invoice for USD 199.50 issued by DOTW, UAE.

17. The applicant has explained the nature of transaction with the help of an example as follows:

Particulars	Amount (in Rs.)
Cost Price (USD 199.50 *64.06)	12,880.00
Add : Service Fee / Convenience Fee	655 .00
Sale Price (Excluding GST)	13,535.00
IGST @ 18% (on Service fee of Rs. 655)	117.90
Sale price (including GST)	13,652.90







18. In case of agreement with Supplier, the applicant would also be getting some target based sales commission for which it would raise a separate invoice on the Hotel Supplier and applicable GST rate would be charged on this commission invoice.
19. In case of Pure Agent, there should be one main service for which some charge is being made and in addition to that there is also reimbursement of other expenses for which B2B client authorises the applicant to make payment on its behalf. In this regard, the applicant provides the service of making the booking with the Hotel and making payment on behalf of the client to the Hotel for which it charges a 'Service Fee'. The B2B client comes to their website, books the Hotel as per its requirement and asks the applicant for Hotel Bill along-with service fee.
20. As per the draft invoice, the applicant is passing on the total cost charged by the Hotel (USD 199.50 * 64.06) to the B2B client which contains the customer name and services rendered and in addition to that the applicant is charging 5% service fee of Rs. 655 as charges for its main service.
21. Since, it is satisfying all the conditions of Pure Agent, it is charging GST only on its service fee charged. The applicant would be passing on the supplier Hotel bill amount to the B2B client on 'As is' basis without giving any discount or inflating the supplier Hotel bill.

Relevant Classification of Services:

S.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
400	9985		Support Services
435	Group 99855		Travel arrangement, tour operator and related services
436		998551	Reservation services for transportation
437		998552	Reservation services for accommodation, cruises and package tours
438		998553	Reservation services for convention centres, congress centres and exhibition halls
439		998554	Reservation services for event tickets, cinema halls, entertainment and recreational services and other reservation services
440		998555	Tour operator services
441		998556	Tourist guide services
442		998557	Tourism promotion and visitor information services
443		998559	Other travel arrangement and related services nowhere else classified



RELEVANT NOTIFICATIONS:

22. Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017:

In exercise of the powers conferred by sub-section (1) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

Table

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
23	Heading 9985 (Support services)	(i) Supply of tour operators services. Explanation.- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. 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)] 2. The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		(ii) Support services other than (i) and (ii) above.	9	-

ADVANCE RULING NO. 09/DAAR/2018 dated 28.06.2019

23. The said S. No. 23 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 has been amended vide Notification No. 1/2018 – Central Tax (Rate) dated 25.01.2018 as follows :

Table

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
23	Heading 9985 (Support services)	(i) Supply of tour operators services. Explanation.- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. Provided that 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 (i.e. tour operator service procured from another tour operator), has not been taken [Please refer to Explanation no. (iv)] 2. The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to Explanation no. (iv)].
		(iii) Support services other than (i) and (ii) above.	9	-



24. Explanation (iv): Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, 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 thereunder.

DISCUSSIONS:


25. The applicant is engaged in the business of outbound tours. It also provides reservation services for accommodation (service code: 998552) or services of booking of hotel rooms in foreign countries to Indian B2B (other travel agents & tour operators) and B2C (tourists) clients who are visiting overseas.

26. For this purpose, the applicant has entered into contracts with various online / off-line hotel aggregators for booking of hotel rooms in foreign countries. As per the requirement of its clients, the applicant does on-line booking of hotel rooms from the websites of such hotel aggregators or otherwise and make payment to them on behalf of the clients.

27. The applicant has also entered into a "Commercial Agreement" dated 27.01.2017 with M/s Destinations of the World DMCC, Dubai, UAE ("DOTW"). The DOTW is a dedicated global wholesale travel distributor that sells a variety of travel components including accommodation, which are made available on a non-exclusive basis to travel companies such as travel agents, tour operators on DOTW's Website or via XML.

28. The terms and conditions of the said Agreement dated 27.01.2017 between the applicant and DOTW include the following:

- i. Only a bona fide Travel Business can obtain a Login ID, password and company access code to enter their online reservation system.
- ii. DOTW transact only with travel companies for sale of travel components and make no direct contact with the customers. DOTW is not a travel agent, nor is it acting as a travel agent.
- iii. The contract for the sale of Travel Components by DOTW is solely with the applicant. The DOTW do not contract for the onward or forward sale of the Travel Components to the Customer, directly or indirectly. A Customer purchasing Travel Components is







contracting directly with the applicant, therefore, the onward sale of Travel Components is solely the responsibility of the applicant.

29. Under the above agreement, the applicant is booking hotel rooms in foreign countries for its Indian clients. The applicant is also required to collect payment for the hotel accommodation services from its clients for onward remittance to DOTW.

30. The applicant has claimed that they are receiving the following amounts during the supply of such services:

- i. The cost of Hotel Accommodation, which is paid by the Indian clients to the applicant in Indian Rupees. The applicant has claimed that they are sending the said amount in foreign exchange to the foreign Hotel Aggregator and are acting as their pure agent. They have claimed that this amount is not liable to the payment of GST.
- ii. Service Fee / Convenience Fee / Commission is received by them from the Indian B2B or B2C clients. The applicant has admitted that they are required to pay GST @ 18% on this amount. Hence, there is no dispute on the taxability of this amount.
- iii. They are also receiving target based sales Commission from the Hotel Aggregators. The applicant has admitted that they are required to pay GST at the applicable rates on this amount. Hence, there is no dispute on the taxability of this amount.

31. A person is liable to pay GST on its transactions which are falling within the "scope of supply" as per section 7 of the CGST Act, 2017, as reproduced below:

(1) For the purposes of this Act, the expression "supply" includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1), —

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.



(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

32. The issues for decision in this case are:

- i. Whether the applicant is acting as an "agent" defined under Section 2(5) of the CGST Act, 2017 while booking hotel accommodation in foreign countries for its clients in India.
- ii. Whether in the case of above mentioned booking of 'Accommodation only' services, the applicant is acting as a "pure agent" in respect of amount received for hotel room, while supplying the main taxable service of booking of hotel rooms, for which it gets service fee / convenience fee from Indian B2B or B2C clients.
- iii. In such cases whether GST @ 18% on the total price (including the hotel cost) is payable or GST @ 18% only on the service / convenience fee (by excluding the hotel cost) is payable, i.e. whether the applicant is liable to pay GST on the total amount paid by the clients (including cost of Hotel Accommodation) or only on the Service fee / convenience fee received by them.
- iv. Whether any option is available under S. No. 23 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 to the 'Tour operators' to either pay GST @ 5% (with no ITC) or to pay GST @ 18% (with full ITC). In other words whether it is permitted to a tour operator who is able to satisfy condition no. 2 given in column (5) of S. No. 23 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 but is willing to pay GST @ 18% so as to take the benefit of ITC.

Question No.1:

33. As far as the first question is concerned i.e. whether the applicant is liable to pay GST on only the service or convenience fee, the main argument of the applicant is that they are acting as "Pure Agent" in case of 'Hotel Accommodation' Service. However, before deciding whether the applicant can be called a pure agent, it needs to be decided that whether, the applicant can be called an "agent" under Section 2(5) of the CGST Act, 2017.

34. It is observed that booking of Hotel Accommodation is being done by the applicant on behalf of the clients as per their specific requirement. It has been submitted by the applicant that the invoice by the foreign Hotel Aggregator (M/s DOTW) is being issued in the



name of the applicant where name of the Hotel, the period of stay and name of the B2B or B2C client is also mentioned. However, the invoice to the client is issued by the applicant. Also, the applicant charges the same amount from Indian client for the Hotel Accommodation which is paid by the applicant to the foreign Hotel Aggregator i.e. DOTW. In addition, the applicant charges Service Fee / Convenience Fee from the clients which is retained by the applicant and is not remitted to the foreign Hotel Aggregator i.e. DOTW.

35. Section 2(5) of the CGST Act, 2017 reads as follows:

"agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

36. Since, it is admitted by the applicant that they are booking the Hotel Accommodation Services on specific requirement of its clients and is not acting on principal to principal basis, it is held that they are covered as "agent" in Section 2(5) of the CGST Act, 2017.

37. Further, it may now be decided whether the applicant can be called "supplier" of services which is defined under Section 2(105) of the CGST Act, 2017.

38. Section 2(105) of the CGST Act, 2017 reads as follows:

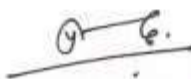
"supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

39. Since, the above definition of "supplier" includes an agent, who is supplying services on behalf of another, it is held that the applicant can be called "Supplier" under Section 2(105) of the CGST Act, 2017, in relation to the supply of Hotel Accommodation Service supplied by the foreign Hotel or Hotel Aggregator.

40. Under section 9 of the CGST Act, 2017, GST is payable by the taxable person on the transaction value of supply of goods or services, except in the situations covered in section 9(3) and 9(4) of the Act where the receiver of the supply of goods or services is liable to pay tax.

9. Levy and collection.

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council







and collected in such manner as may be prescribed and shall be paid by the taxable person.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

41. Section 2(107) of the CGST Act, 2017 reads as follows:

"taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

42. Now, it may be decided whether the applicant is required to be registered under Section 22 or Section 24 of the CGST Act, 2017 while supplying services as an agent.

43. Section 22 of the CGST Act, 2017 reads as follows:

Persons liable for registration:

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Explanation.—For the purposes of this section,—

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

44. Section 24 of the CGST Act, 2017 reads as follows:

Compulsory registration in certain cases:



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Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

45. From the above, it is observed that under Explanation (i) to Section 22 and Clause (vii) of Section 24 of the CGST Act, 2017, the applicant is compulsorily required to be registered while acting as an agent for supply of services.

46. Hence, the applicant can be called 'taxable person' as per Section 2(107) of the CGST Act, 2017.

47. From the combined reading of Sections 2(5), 2(105), 2(107), 22 and 24 of the CGST Act, 2017, it is clear that the applicant is covered in the definitions of "Agent", "Supplier" and "Taxable Person". Further, the applicant is falling under the categories of persons under Section 22 and also under Section 24 requiring compulsory registration while booking Hotel Accommodation in foreign countries for its clients in India.

48. The second issue for decision is whether the applicant is acting as a "pure agent" in respect of amount received by them from the clients which is remitted by the applicant to the foreign Hotel Aggregators.

49. Section 15 of the CGST Act, 2017 reads as follows:

(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.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges 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 Services 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

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services or both at the time of, or before delivery of goods or supply of services;

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

50. The Rule 33 of the CGST Rules, 2017 read as under:

Value of supply of service in case of pure agent:

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from

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B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

51. Clarification issued by CBEC on Pure Agent concept in GST:

"Introduction

The GST Act defines an Agent as a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

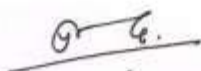
So, who is a pure agent and why is a pure agent relevant under GST? Broadly speaking, a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent.

Let's understand the concept by taking an example. A is an importer and B is a Custom Broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the consignment to A would also require taking service of a transporter. So A, also authorises B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals. In the given illustration, B is providing Customs Brokers service to A, which would be on a principal to principal basis. The ancillary service of transportation is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of Customs Broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.

RELEVANCE OF PURE AGENT UNDER GST

The concept is borrowed from the erstwhile Service Tax Determination of Value Rules, 2006 and carried forward under GST. Under the GST Valuation Rules 2017 pure agent is given the following meanings.

A "pure agent" means a person who –







- a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- b) neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;
- c) does not use for his own interest such goods or services so procured; and
- d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract. In the illustration of importer and Customs Broker given above, assuming that the contract was for clearance of goods and delivery to the importer at the price agreed upon in the contract. In such case, the Customs Broker would be using the transport service for his own interest (as the agreement requires him to deliver the goods at the importers place) and thus would not be considered as a pure agent for the services of transport procured.

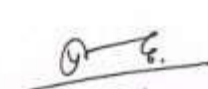
Another important fact is that, the person who provides any service as a pure agent receives only the actual amount for the services provided. Coming back to our example of Importer and Customs Broker, the agreement provides reimbursement of transport services utilised at actuals. In this case, let's say the value of transport service was Rs. 10,000/-. If the Customs Broker charges any amount more than Rs. 10,000/-, then he will not be considered as a pure agent for the services of transport and the value of transport service will be included in the value of his Customs Broker service.

EXCLUSION FROM VALUE

Expenditure incurred as pure agent becomes relevant, when it comes to determining the value of a supply for levy of GST. The preceding para explains who will be considered as a pure agent. The valuation rules provide that expenditure incurred as pure agent, will be excluded from the value of supply, and thus also from aggregate turnover. However, such exclusion of expenditure incurred as pure agent is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case.

The supplier would have to satisfy the following conditions (in addition to the condition required to be satisfied to be considered as a pure agent) for exclusion from value :-

- i. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;







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- ii. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- iii. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case the conditions are not satisfied, such expenditure incurred shall be included in the value of supply under GST.

The following illustration will make the concept clearer:

- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B.
- Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies.
- The fees charged by the Registrar of the companies, registration and approval of the name are compulsorily levied on B.
- A is merely acting as a pure agent in the payment of those fees.
- Therefore, A's recovery of such expenses is a reimbursement and not part of the value of supply made by A to B.

Some examples of pure agent are:

1. Port fees, Port charges, Custom duty, dock dues, transport charges etc. paid by Customs Broker on behalf of owner of goods.
2. Expenses incurred by C & F agent and reimbursed by principal such as freight, godown charges.

Illustration:

Suppose a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

S.No.	Component Charged in Invoice	Amount
1	Agency Income	Rs. 10,000/-
2	Travelling expenses; Hotel expenses	Rs. 15,000/-
3	Customs Duty	Rs. 55,000/-
4	Docks Dues	Rs. 5000/-

In the above situation, agency income and travelling/ hotel expenses shall be added for determining the value of supply by the Customs Broker whereas Docks dues and



the Customs Duty shall not be added to the value provided the conditions of pure agent are satisfied.

CONCLUSION

A pure agent concept is an important one for businesses as it has direct implications on the value of taxable service. It has direct bearing on the amount of GST charged on a particular supply. It also has bearing on the aggregate turnover of the supplier and therefore on calculating the threshold limit for registration. Whenever the intention is to act as a pure agent, care should be taken to ensure that the conditions specified for such pure agents and further conditions given in the valuation rules are also met so that only the real value of the service provided is subjected to GST. "

52. From the above, it is clear that the applicant is engaged in rendering services of booking of hotel accommodation. The consideration for rendering such services is partly received from the Indian clients as service fee / convenience fee and partly received from the foreign Hotel aggregator as target based sales commission. The applicant has not disputed their liability to pay GST @ 18% on all such amounts whether received from the clients or from the Hotel Aggregators.

53. However, as far as service of hotel accommodation is concerned, the same are supplied by the applicant to their clients on behalf of foreign hotels / hotel aggregators as their agent. Since, the applicant is charging the same amount from their client as is paid by them to the hotel aggregators and all other conditions of "pure agent" are also satisfied, the value of hotel accommodation cannot be added to value of their main service which is booking of hotel accommodation.

54. As far as the third issue is concerned, i.e. whether GST is payable on the amount received by the applicant from the clients as pure agent and is paid by them to the foreign hotel / hotel aggregator, it is seen that in respect of such services, the applicant is covered in the definition of "Agent", 'supplier' and 'Taxable Person' under sections 2(5), 2(105) and 2(107) respectively of CGST Act, 2017. Hence, any liability to pay GST on such amount has to be discharged by the applicant.

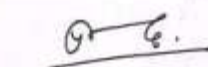
55. Section 12(1), 12(2) and 12(3) of the IGST Act, 2017 read as follows:

Place of supply of services where location of supplier and recipient is in India.

(1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

(2) The place of supply of services, except the services specified in sub-sections (3) to (14),—

(a) made to a registered person shall be the location of such person;







- (b) made to any person other than a registered person shall be,—
(i) the location of the recipient where the address on record exists; and
(ii) the location of the supplier of services in other cases.

(3) The place of supply of services,—

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

56. Hence, from proviso to Section 12(3) of the IGST Act, 2017, it is observed that if the location of hotel is outside India, the place of supply of hotel accommodation service is the location of recipient of service i.e. India. Hence, in this case, since, the applicant is covered in the definition of supplier and is located in India, even though the hotel is located outside India, the place of supply of service will be India.

57. Accordingly, the applicant is liable to pay GST under Section 9(1) of the CGST Act, 2017, being taxable person as per Section 2(107) of the said Act in respect of the said supply. The supply of services by the applicant as an agent on behalf of M/s DOTW cast a responsibility on the applicant to also collect and/or deposit GST on the taxable supply of goods or services, even, if they are acting only as an agent of M/s DOTW. The contention of the applicant that they are acting as a pure agent and they are not supplying the said services on their own account are not relevant as they are admittedly acting as an agent of M/s DOTW and agents are covered in the definition of "supplier" as per section 2(105) of the CGST Act, 2017, and are liable to pay GST as per Section 9(1) of the CGST Act, 2017.

Question No. 2:

58. The fourth issue for decision is whether the applicant has the option to pay GST @ 18% (with full ITC) on 'Tour operators services' under S. No. 23 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017.



Before 25.01.2018:

59. It is observed that under S. No. 23 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017, only those services which are not covered in entry (i) of Column (3) are covered in entry (ii) @ 9% CGST (with full ITC). Hence, services covered in entry (i) of column (3) i.e. 'Tour Operators Services' are not covered in entry (ii).

From 25.01.2018:

60. Similarly, it is observed that under S. No. 23 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017, only those services which are not covered in entry (i) of Column (3) are covered in entry (iii) @ 9% CGST (with full ITC). Hence, services covered in entry (i) of column (3) i.e. 'Tour Operators Services' are not covered in entry (iii).

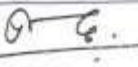
61. The applicant has contended that they as a tour operator have an option to avail the ITC provided they pay GST @ 18% (9% CGST + 9% SGST). However, the view of the applicant is not correct as only those support services are covered under GST @ 18% (9% CGST + 9% SGST) which are not 'tour operators services'.

Ruling

62. The applicant is supplying booking of hotel accommodation services. They are admittedly paying GST @ 18% (9% CGST + 9% SGST) on service fee / convenience fee / commission received from clients and also on target based sales commission received from the foreign hotel aggregators (DOTW). The value of 'hotel accommodation' paid by the client to them, which is remitted by them to the foreign hotel / hotel aggregator cannot be included in such taxable value, provided the conditions of pure agent are satisfied.

63. The applicant is required to collect / deposit GST under Section 9(1) of the CGST Act, 2017 on the amount received by them from the clients on the value of 'hotel accommodation' service, while acting as an agent under Section 2(5) of the said Act being "taxable person" defined under Section 2(107) of the said Act and "supplier" defined under section 2(105) of the said Act.

64. The 'tour operators services' are covered under entry (i) of S. No. 23 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 and they are required to pay GST @ 5% (2.5% CGST + 2.5% SGST) (without ITC) subject to fulfilment of conditions and they are not covered under entry (ii) of the S. No. 23 of the said Notification before 25.01.2018 and entry (iii) of S. No. 23 of the said Notification from 25.01.2018 and hence option to pay GST @ 18% (9% CGST + 9% SGST) (with ITC) is not available to them.


Pankaj Jain
Member (Centre)


Vinay Kumar
Member (State)

