



**RAJASTHAN AUTHORITY FOR ADVANCE
RULING
GOODS AND SERVICES TAX**

**NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO.RAJ/AAR/2018-19/24



Nitin Wapa Joint Commissioner	:	Member(Central Tax)
Hemant Jain Joint Commissioner	:	Member(State Tax)
Name and address of the applicant	:	M/s Pawanputra Travels, Shop No. 4, Jasnath Market, Sindhri Highway, Ram Nagar, Barmer (Rajasthan).
GSTIN of the applicant	:	08AAIFP7583M1ZE
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	b. Applicability of a notification issued under the provisions of this Act; e. Determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	22.10.2018
Present for the applicant	:	Shri Pradeep Jain, CA (Authorised representative)
Date of Ruling	:	02.11.2018

Note: Under Section 100 of the CGST/RGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/RGST Act 2017, within a period of 30 days from the date of service of this order.

The Issue raised by M/s Pawanputra Travels (hereinafter the applicant) is fit to pronounce advance ruling as it falls under ambit of the Section 97(2) (b), (e) it is given as under:

- b. Applicability of a notification issued under the provisions of this Act;
- e. Determination of the liability to pay tax on any goods or services or both;

Further, the applicant being a registered person, GSTIN is 08AAIFP7583M1ZE, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the application is '**admitted**' to pronounce advance ruling.

1. SUBMISSION OF THE APPLICANT:

The applicant have been awarded contract for providing both air conditioned and non-airconditioned vehicles on hire to the Indian Army. A copy of agreement and letter of Intent is submitted by the applicant along with application.

The applicant has raised invoices on Indian Army by charging GST on all types of vehicles (air conditioned and non-air conditioned) supplied by them. However, the Indian Army has not reimbursed them GST on non-air conditioned vehicles provided by them on the grounds that no GST is payable on non-air conditioned contract carriages as per serial no. 15 of exemption notification no. 12/2017-Central Tax (Rate) dated 28.06.2017. The applicant has also submitted a letter dated 31.05.2018 regarding return of invoices wherein GST has been charged by the applicant on non-air conditioned vehicles.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

The applicable GST rate on supply of non-air conditioned vehicles on hire to Indian Army.





3. **APPLICANT'S INTREPRETATION:-**

a. The applicant submits that there is exemption with respect to transportation of services by a non-air conditioned contract carriage vide serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 which reads as follows:-

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
15	Heading 9964	<i>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; or</i>	Nil	Nil

It is to mention that the meaning of 'contract carriage' will have the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 which states that-

"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 authorised 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;

It is submitted that they neither satisfy the condition prescribed in clause (a) nor specified in clause (b) and accordingly, in their view, they

cannot be considered as 'non-air conditioned contract carriage' eligible for exemption under the serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017. However, the service receiver in their case is contending that they are covered by the exemption notification and no GST is payable to the government. Therefore, the applicant request you to kindly examine whether they are eligible for claiming the benefit of exemption contained at serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 or not.

b. The applicant further submits that they have already paid GST on the supply of non-air conditioned motor vehicles supplied by them on hire to Indian Army but the service receiver is not reimbursing them the amount of GST on the grounds that the supply is covered by absolute exemption under serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017. In this regard, the applicant submits that GST is indirect taxation, the burden of which is to be borne by the recipient. It is also pertinent to mention that as per Explanation to section 11 of the CGST Act, 2017, in case where there is absolute exemption granted by the government, the registered person is not supposed to collect GST from the buyers/receivers. The said section is produced for the sake of convenient reference as follows:-

11. (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it

had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

The applicant submits that the exemption under notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 has been granted in exercise of the powers conferred under section 11(1) of the CGST Act, 2017 and so it is very important to ascertain the applicability of exemption notification in the present case as if the exemption is admissible in the present case, they cannot collect GST from their service receiver. Therefore, decision should be given as regards applicability of exemption notification in the present case so that the applicant is able to correctly determine its tax liability.

4. PERSONAL HEARING (PH):-

In the matter personal hearing was given to the applicant, Shri Pradeep Jain, CA, (Authorised representative) of applicant appeared for personal hearing on 22.10.2018. During the PH they reiterated the submissions already made in the application for advance ruling and requested that the case may be decided at the earliest.

5. FINDINGS , ANALYSIS AND CONCLUSION:

- a. The present application for advance ruling has been filed to seek decision on the applicability of GST on the service of providing non-air conditioned motor vehicles on hire to Indian Army on contract basis for a period of one year.
- b. The serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 which reads as follows:-



S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
15	Heading 9964	<p>Transport of passengers, with or without accompanied belongings, by –</p> <p>(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or</p>	Nil	Nil



It is pertinent to mention that it is provided that the meaning of 'contract carriage' will have the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 which states that-

"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 authorised 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;

Thus, the essential ingredient of a contract carriage is that it plies under a contract for a fixed set of passengers, and does not allow any other passenger to board or alight from the carriage at will.

A 'contract carriage' carries passengers as a group and cannot pick up passengers *en-route*.

c. Since the rent-a-cab has not been defined under GST Act, we need to analyse the same word taking the help of Motor Vehicle Act, 1988.

Dictionary meaning of Rent a cab is "Taxi" "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimeters;

"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).

'Stage Carriage' means a motor vehicle constructed or adopted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [section 2(40) of the Motor Vehicles Act, 1988].

Motor Cab Section 2(25) of Motor Vehicles Act, 1988 defines 'motor cab' as any motor vehicle constructed or adapted to carry not more than 6 passengers *excluding* driver, for hire or reward.

As per section 2(22) of Motor Vehicles Act, 1988 **'maxi cab'** means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, *excluding* the driver, for hire or reward. These vehicles are more popularly known as vans, Innova, sumo etc.

d. The applicant does not satisfy the condition prescribed in clause (a) nor specified in clause (b) of clause (7) of section 2 of the Motor Vehicles Act, 1988 and accordingly, they cannot be considered as 'non-air conditioned contract carriage' and are hence not eligible for exemption under the serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017.

Thus, the essential ingredient of a contract carriage is that it plies under a contract for a fixed set of passengers, and does not allow any other passenger to board or alight from the carriage at will.

A 'contract carriage' carries passengers as a group and cannot pick up passengers en-route.

e. Even if the contract is assumed as 'non-airconditioned contract carriage', even then, serial no. 15 of the exemption notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 does not exempt it from GST, as the "hired" non-airconditioned contract carriage are 'excluded' from exemption as specifically mentioned in the said notification.

f. It is hence concluded that the service provided by the applicant falls under 'rent a cab' service which attracts:-

IGST @ 5% (SGST @ 2.5% and SGST @ 2.5%) 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. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken

Or

IGST @ 12% (SGST @ 6% and SGST @ 6%) if input tax credit is to be availed.

6. In view of the foregoing, we rule as under:-

RULING

The Service provided by the applicant is not exempted under Notification No. 12/2017 dated 28.06.2017 as this Service does not fall under 'non-airconditioned contract carriage' category. The service provided is 'rent a cab' Service, which attracts IGST @ 5% (CGST @ 2.5% and SGST @ 2.5%) 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. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken* Or IGST @ 12% (CGST @ 6% and SGST @ 6%) if input tax credit is availed.

2/11/18
NITIN WAPA

Member

(Central Tax)

SPEED-POST

M/s Pawanputra Travels,
Shop No. 4, Jasnath Market,
Sindhri Highway, Ram Nagar,
Barmer, Rajasthan



2/11/18
HEMANT JAIN

Member

(State Tax)

Copy to:-

o/c

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Superintendent

