

Whether the service of providing passenger buses on rent/lease by the applicant to Kerala State Road Transport Corporation (hereinafter referred to as 'KSRTC') is chargeable to GST @ 18% under Tariff Heading 9966; i.e., 'Rental Services of Transport Vehicles' in terms of Entry No. 10(iii) of Notification No.II/2017-CT Rate) dated 28.06.2017? HELD Answered in Negative (2) Whether the service of providing passenger buses on rent/lease by the applicant to KSRTC would be exempt from payment of GST under Tariff Heading 9966.i.e. 'Services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers' in terms of Notification No. 12/2017-CT(R) dated 28.06.2017 or not? HELD Answered in affirmative

ADVANCE RULING No. KER/26/2023, Dated 27th June, 2023

**KERALA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX DEPARTMENT**

Tax Tower, Thiruvananthapuram

BEFORE THE AUTHORITY OF : Dr. S. L. Sreeparvathy, IRS &
: Shri. K Abdul Latheef

Legal Name of the applicant	M/s. Maha Voyage LLP
GSTIN	32ABBFM4084G1ZI
ARN No.	AD320422008772I
Address	F5, Artech Sreirema Villaments, Bhagwathy Lane, Pippinmooddu, Shasthamangalam, Trivandrum, Kerala-695010
Advance Ruling sought for	1 Whether the service of providing passenger buses on rent/lease by the applicant to Kerala State Road Transport Corporation (hereinafter referred to as 'KSRTC') is chargeable to GST @ 18% under Tariff Heading 9966 i.e., 'Rental Services of Transport Vehicles' in terms of Entry No. 10(iii) of Notification No. 11/2017-CT Rate) dated 28.06.2017? 2 Whether the service of providing passenger ' buses on rent/lease by the applicant to KSRTC would be exempt from payment of GST under Tariff Heading 9966.i.e. 'Services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers' in- terms of Notification No. 12/2017-CT(R) dated 28.06.2017 or not? 3 If the answer to both the above question is negative, then what is the nature of services provided by the Applicant and what is the rate of tax applicable on such services?
Date of Personal Hearing	12.06.2023
Authorized Representative	Mr. Bharath Rai Chandani, Advocate

1. M/s. Maha Voyage LLP, (hereinafter referred to as the Applicant) is a Limited Liability Partnership duly registered under the Limited Liability Partnership Act, 2008.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference herein after to the provisions of the CGST Act, Rules and Notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued thereunder.

3. The applicant requested advance ruling on the following:

3.1. Whether the service of providing passenger buses on rent/lease by the applicant to Kerala State Road Transport Corporation (hereinafter referred to as 'KSRTC') is chargeable to GST @ 18% under Tariff Heading 9966 i.e., 'Rental Services of Transport Vehicles' in terms of Entry No. 10(iii) of Notification No.11/2017-CT Rate) dated 28.06.2017?

3.2. Whether the service of providing passenger buses on rent/lease by the applicant to KSRTC would be exempt from payment of GST under Tariff Heading 9966.i.e. 'Services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers' in terms of Notification No. 12/2017-CT(R) dated 28.06.2017 or not?

3.3. If the answer to both the above question is negative, then what is the nature of services provided by the Applicant and what is the rate of tax applicable on such services?

4. Contentions of the Applicant:

4.1. The applicant submits that M/s Scania Commercial Vehicle India Private Limited 'scania' won the tender invited by KSRTC to lease 25 buses under the condition that the winning bidder has to identify and appoint an operator / who shall lease out the buses to KSRTC. Subsequently the applicant has been identified by scania and intimated KSRTC that the applicant is interested in leasing 10 number of Multi Axle Air Conditioned buses.

4.2. Subsequently KSRTC and the applicant entered into an agreement for hiring Scania buses under wet lease on 15.09.2017. The copy of the agreement is attached as Annexure -B. The Applicant submits that the relevant clauses of the agreement are as follows;

4.2.1. As per Clause 1 of the agreement, the applicant has agreed to give buses on wet lease to KSRTC for a period of 5years, subject to extension on mutual consent of the parties.

4.2.2. Clauses 2 to 11 of the agreement stipulate the specification of the leased buses and the term and conditions with respect to maintenance of the leased buses and Clauses 12 to 22 contain the provisions for providing trained drivers for the operation of the buses.

4.2.3. As per Clause 26 of the agreement the applicant is responsible for operation of the buses in compliance with the routes and timings provided by KSRTC.

4.2.4. In terms of clause 41, 52, and 53 of the Agreement, the fuel cost of the buses shall be borne by KSRTC.

4.2.5. Clause 47 provides for the payment of taxes and levies and Clause 49 of provides the terms for payment of service charges on kilometre basis daily.

4.2.6. As per Clause 51, GST on hiring charges, if applicable and paid by the applicant will be reimbursed by KSRTC on production of proof of payment. Thus, in terms of the above agreement, the applicant raised invoice on KSRTC for service charges along with GST at the rate of 18% under Tariff Heading 9966. The sample copies of the invoices are enclosed as Annexure -C.

4.2.7. Further, in terms of Clause 55 and 56 of the Agreement, the applicant and KSRTC shall after mutual consent provide advertisement options and luggage/ cargo transportation on revenue sharing basis.

4.3. KSRTC has allowed them to carry luggage in the 10 wet lease buses at the rate of Rs. 10,000/- + 18% GST. Subsequently, KSRTC informed the Applicant that they would discontinue paying GST on the invoices issued by the applicant towards Tenting of bus services' from April 2019 stating that the services given by the Applicant are exempt under SI No. 22 of Notification 12/2017 - CT (Rate) dated 28.06.2017. The applicant submits that they have continued to charge and pay GST on the invoices raised to KSRTC, however the GST component had not been reimbursed/paid to the applicant by KSRTC since April 2019.

4.4. The applicant submits that there is a supply of service being provided to KSRTC in terms of section 7 of the CGST Act. The Applicant contended that as there are two parties and there is a consideration for the service. The applicant has rented out its own buses to KSRTC. Consequently, the applicant is of the view that they are liable to pay GST on the said service charges/ amount/consideration received from KSRTC. The rate of tax applicable on the said supply would be 18% in as much as the applicant is also required to make available the drivers, provide for maintenance and upkeep for the buses and the consideration does not include the cost of fuel. In addition to this, the Agreement also provides for the services of 'Sale of space for advertisement' and 'transportation of Cargo/Luggage' for separate consideration from such willing customers. However, KSRTC is of the view that the services provided by the Applicant is exempt from payment of GST in terms of Notification No. 12/2017-CT(R) dated 28.06.2017 being services by way of giving on hire to a state transport undertaking a motor vehicle meant to carry more than twelve passengers. According to KSRTC, they are a state transport undertaking and the applicant has provided services by way of giving on hire motor vehicles. Further, KSRTC is also of the opinion that the applicant can claim the refund of the amount of GST collected and paid by the applicant.

4.5. The applicant states that KSRTC had approached both the Commissioners of Centre and State GST seeking clarification regarding whether the hiring of the buses by KSRTC from the applicant is exempt from GST in terms of Notification No. 12/2017- CT (Rate) dated 28.06.2017 and whether the applicant can claim refund of the said GST already paid to the credit of the Government and got positive reply from their side.

4.6. In light of the above, the applicant is seeking the present ruling to know whether understanding of the applicant is correct i.e. whether the service of providing passenger buses on rent/ lease by the applicant to KSRTC is chargeable to GST at the rate of 18% under Tariff Heading 9966 i.e. 'Rental Services of Transport Vehicles' in terms of Entry No. 10(iii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017?

4.7. The Applicant submits that the services by way of renting of buses and operation and maintenance of such buses is a "supply" in terms of section 7 of the CGST Act, 2017 and consequently, would be liable to GST at 18% in terms of SI. No. 10(ii) of Notification No. 11/2017-CT(R) dated 28.06.2017 (being 'Services by way of giving on hire - (a) to a state

transport undertaking, a motor vehicle meant to carry more than twelve passengers;).

4.8. The applicant extracts SI No. 10 of Notification No. 11/2017 CT (Rate) dated 28.06.2017 and SI No. 22 of Notification No. 12/ CT (Rate) dated 28.06.2017 as follows;

SI. No	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
10	Heading 9966 Rental services of transport vehicles	(i) Renting of motor cab where the cost of fuel is included in the consideration charged from the service recipient.	2.5	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]
		(ii) Rental services of transport vehicles with or without operators, other than (i) above	9	

** became 10(iii) with effect from 25.01.2018 vide Notification No. 1/2018-CT Notification No. 12/2017-CT(R) dated 28.06.2017.

SI. No	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
22	Heading 9966 or Heading 9973	Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods.	Nil	Nil

4.9. The applicant is a Limited Liability Partnership and KSRTC is a transport undertaking. The applicant has purchased buses and supplied the buses to KSRTC for being run as a 'stage carriage' on the designated routes. The buses shall be operated and maintained by the applicant. Thus, evidently, there is a supply of service by the applicant to KSRTC. The supply is in the course or furtherance of the business of the applicant. The applicant is entitled for service charges which are calculated on kilometer basis. Thus, there is a consideration. Hence, the applicant's interpretation is that all ingredients of Section 7 of the CGST Act are satisfied in the instant case.

4.10. The contract with KSRTC is for providing buses on lease/ rent and further, operation and maintenance of buses on designated routes as provided by KSRTC. The buses are purchased by the applicant and they provide the drivers for transportation of passengers in these buses. The applicant is also responsible for incurring expenses on maintenance of the buses. In lieu of these services, KSRTC is providing them service charges on kilometer basis. The applicant cannot run the buses except for KSRTC. The overall control of the buses is with KSRTC. Though the ownership of the buses lies with the applicant, KSRTC has exclusive authority to determine routes and schedules and the drivers appointed by them are under the control of KSTRC.

4.11. Therefore, there is transfer of right to use the buses to KSRTC. The effective possession (as distinguished from physical possession) and effective control is with KSRTC. All buses are embodied with "KSRTC" name and logo on both the sides (Clause 65 of the Agreement). The buses are used as "stage carriage" on the scheduled routes of KSRTC and are plying as per directions and control of KSRTC. All buses are parked in the depots owned by KSRTC (Clause 42 of the Agreement). The applicant has no right and/or authority in deciding the routes, schedules, the frequency of the buses and the fares. Even though the drivers are appointed by the applicant, it is KSRTC who decides the routes for them, appoints the Conductors and collects the fare from the passengers. The activity, according to the applicant, shall amount to 'renting of motor vehicle' and shall qualify as a taxable activity, taxable at the rate of 18% under Notification No. 11/2017- CT(Rate) dated 28.06.2017

4.12. The applicant states that the transaction is renting and not hiring. In case of renting, there is a transfer of

possession and effective control to an other person. The applicant is in the nature of an agent or employee. The passengers boarding the buses do not even know that the buses are owned and operated by the applicant. The primary activity of "actual running of buses is carried out by KSRTC. The buses are under the effective possession, control and enjoyment of KSRTC. Thus the applicant has only rented out these buses to KSRTC. The transaction between KSRTC and the Applicant is not one of hiring. The transaction between KSRTC and its passengers is one of hiring. The passenger pays the designated fare for transportation.

4.13. The applicant relies on the following judgments wherein the distinction between renting and hiring are explained and submits that as per the ratio of the said judgments the transaction is in the nature of renting and not hiring. Judgment of the Hon'ble Supreme Court in State of A P Vs Rashtriya Is-pat Nigam Ltd 2002 89 AIR 1305 SC; Judgment dated 28.01.2011 of the Hon'ble High Court of Andhra Pradesh in G.S.Lamba and Sons Vs State of Andhra Pradesh; Judgment of Honble High Court of Orissa in Krishna Chandra Behera Vs State of Orissa 1991 83 STC 325 (Orissa); CCE V/s Sachin Malhotra 2014 (10) TMI 816 and a similar ruling by CESTAT was in the case of R.S Travels Vs CCE 2008 (12) STR 27 and Judgment of the Hon'ble High Court of Andhra Pradesh in Lakshmi Audio Visual Inc Vs Assistant Commissioner 2001 124 STC 426 Kar. The applicant also relies on a similar matter decided by the Hon'ble Maharashtra Authority for Advance Ruling dated 14.06.2021 in the application of M/s M. P. Enterprises and Associates Limited. Accordingly, the applicant submits that the agreement between the applicant and KSRTC is similar to an agreement for renting of shops, hotels etc to the customers. Thus, the subject transaction is in the nature of 'renting' and not 'hiring'.

4.14. The applicant submits that KSRTC is also engaged in providing sale of 'space for advertising' and 'luggage / cargo transportation services'. The revenue from such services is shared with the applicant in terms of Clauses 55 and 56 of the Agreement. Thus, KSRTC is in full possession and control of the buses. In other words, if the possession would have been with the Applicant, there was no requirement for the applicant to share the additional revenue generate from the aforesaid services. This itself is evidence of the fact that the applicant is merely a 'de jure' owner but the 'de facto' owner of the buses is KSRTC.

4.15. The applicant submits that the entry at SI No. 10 of the Notification No. 11/2017-CT(R) dated 28.06.2017 notifies rate of tax in respect of three categories of 'renting' under Heading 9966 namely-

"1. Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, wherein the GST rate is 5% provided on condition that no ITC is availed;

2. Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, wherein the GST rate is 12% with consequential benefit of input tax credit;

3. Rental services of transport vehicles with or without operators wherein the rate of GST is 18%."

The applicant states that their activity would fall under the residuary entry i.e., rental services of transport vehicles and would be liable to GST at the rate of 18%.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98 (1) of the CGST Act. The Jurisdictional officer has submitted that no proceedings are pending on the issue against the applicant.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 12.06.2023. Mr. Bharath Rai Chandani, Advocate represented the applicant for personal hearing which was conducted virtually. The representative reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

7. Discussion and Conclusion:

7.1. We have carefully examined the advance ruling application, statement of facts and considered the oral submissions made at the time of personal hearing. The question to be answered is regarding the rate of tax on the transaction of providing passenger buses on rent / lease by the applicant to KSRTC as per the Agreement dated 15.09.2017 entered by them with KSRTC.

7.2. The questions on which advance ruling is sought by the applicant falls under the purview of Section 97(2)(b) of the GST Acts "applicability of a notification issued under the provisions of this Act " and hence admitted.

7.3. As per the agreement, the applicant has to provide the required specification of the leased buses along with trained drivers for the operation of such buses. Further, the applicant is solely responsible for operation of the buses in compliance with the routes and timings provided by the KSRTC. The fuel cost of the buses shall be borne by the KSRTC. The applicant will receive service/rental charges daily on a kilometre basis and also additional consideration proportionate to the revenue earned by display of advertisement in the buses and also transportation of cargo / luggage in the buses.

7.4. Kerala State Road Transport Corporation Ltd is established by the Government of Kerala by Notification dated 15.03.1965 under the Road Transport Corporations Act, 1950 for the operation and management of public transport in

the State of Kerala and accordingly is a "state transport undertaking" under Section 2 (42) of the Motor Vehicles Act, 1988 and consequently a "state transport undertaking" as defined in Para 2 (zzk) of Notification No. 12/2017 CT (Rate) dated 28.06.2017.

7.5. SI. No. 22 of the Notification No. 12/2017-Ccntral Tax (Rate) dated 28.06.2017 as amended reads as follows;

SI. No	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
22	Heading 9966 or Heading 9973	<p>Services by way of giving on hire -</p> <p>(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or</p> <p>(aa) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; or</p> <p>Explanation. - For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.</p> <p>(b) to a goods transport agency, a means of transportation of goods.</p> <p>(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.</p>	Nil	Nil

7.6. On a plain reading of the above entry, it is obvious that services by way of giving on hire of motor vehicles meant to carry more than twelve passengers to a State Transport Undertaking is exempted.

7.7. The submission of the applicant is that the subject transaction between the applicant and KSRTC is in the nature of renting and not hiring and hence the transaction is liable to GST at the rate of 18% as per entry at SI No. 10 (iii) of Notification No. 11/2017 CT (Rate) dated 28.06.2017.

7.8. The distinction between the activity of "renting" and "hiring" and consequently the eligibility of exemption from GST for transactions in the nature of renting of motor vehicles to state transport undertakings in as much as the exemption entry at SI No.22 of the said notification employs the words "services by way of giving on hire" became a subject matter of dispute in the wake of ruling issued by an Authority for Advance Ruling that the entry at SI. No. 22 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them relying on certain case laws pertaining to the erstwhile service tax regime.

7.9. Therefore, a clarification was issued by CBIC in Para 8.4 of Circular No. 164/20/2021-GST dated 06.10.2021, which reads as follows;

"8.4 The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the expression "giving on hire" in SI. No. 22 of the Notification No. 12/2017 -CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles."

7.10. In view of the above clarification that the expression "giving on hire includes renting of vehicles the transaction of renting vehicles meant to carry more than twelve passengers to a State Transport Undertaking is eligible for the exemption at SI. No. 22 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

7.11. Thus, we conclude that the services being provided by the applicant as per Agreement dated 15.09.2017 to KSRTC; a State Transport Undertaking by way of renting / lease of buses /motor vehicles meant to carry more than twelve passengers is exempted from GST as per entry at SI. No. 22 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

Given the observations stated above, the following rulings are issued;

RULING

Question 1: Whether the service of providing passenger buses on rent/lease by the applicant to Kerala State Road Transport Corporation (hereinafter referred to as 'KSRTC') is chargeable to GST @ 18% under Tariff Heading 9966; i.e., 'Rental Services of Transport Vehicles' in terms of Entry No. 10(iii) of Notification No.11/2017-CT Rate) dated 28.06.2017?

Answer: No.

Question 2: Whether the service of providing passenger buses on rent/lease by the applicant to KSRTC would be exempt from payment of GST under Tariff Heading 9966.i.e. 'Services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers' in terms of Notification No. 12/2017-CT(R) dated 28.06.2017 or not?

Answer: Yes. The services are exempted from GST as per entry at Sl. No. 22 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

Question 3: If the answers to both the above questions are negative, then what is the nature of services provided by the Applicant and what is the rate of tax applicable on such services?

Answer: Not relevant in view of the answer to Question no. 2 above.

Sreeparvathy S. L.
Additional Commissioner of State Tax
Member

Abdul Latheef, K
Joint Commissioner of Central Tax
Member