



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

A.R.Com/20/2020

Date:03.11.2021

TSAAR Order No.22/2021

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,
2017.]**

1. M/s. Sri Krishna Logistics 37-1-169-43/9, 401, Lakshmi Sai Residency Lambadi Donka, Near Power office, Ongole, Prakasam – 523 001 Andhra Pradesh (Un Registered) has filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted
4. **Brief facts of the case:**
The applicant M/s. Sri Krishna Logistics is in the business of transportation of goods as a GTA. They have stated that they are desirous of starting business of transportation of passengers in Telangana State by deploying Air Conditioned buses as Stage carriages. They have stated in the application that there is ambiguity regarding applicability of rate of tax for their proposed business with respect to Sl.No.8(ii) and 8(vi) of Notification 11 of 2017. Hence, this application.

5. **Questions raised:**

- 1 (A)** Whether the rate of GST of 5% (2.5% each towards CGST & SGST) as per Sl.No.8(ii)(b) of Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017 with the condition that input tax credit is not allowed on goods and services.
- 1 (B)** Whether input tax credit on inward supply of services received from the suppliers who are in the same line of business as this condition is not mentioned against the said serial no.
- 2 (A)** Whether the rate of GST 5% (2.5% each towards CGST & SGST) as per Sl.No.8(vi) of Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017 with the condition that input ax credit is not allowed on goods and services used in our outward supply of services other than that of similar inward supply of services received from another service provide.
- 2 (B)** Whether option of 12% (6% each towards CGST & SGST) with no conditions attributed to it is applicable.

6. **Personal Hearing:**

The Authorized representatives of the unit namely Sri C.V Suryam, CA & AR attended the personal hearing held on 05-10-2021. The authorized representatives reiterated their averments in the application submitted and contended as follows:

1. That the applicant is involved in the business of passenger transport and is desirous of initiating their business in the State of Telangana.
2. That in their view they fall under serial no. 8(vi) of Notification No. 11/2017 amended upto latest and therefore are liable to tax at the rate of 6% CGST & SGST each without any restrictions on availment of ITC.
3. That they are desirous of clarification regarding any option available under this entry and the procedure regarding the same to avail a lower rate of tax.

7. **Discussion & Findings:**

The applicant seeks clarification with respect to the distinction between the services mentioned in Sl.No.8 (ii)(b) and Sl.No.8(vi) of Notification No. 11/2017-Central Tax (Rates), dt: 28-06-2017 and other concomitant liabilities.

The service mentioned at Sl.No.8(ii)(b) is "Air Conditioned Stage Carriage" whereas the service mentioned at Sl.No.8(vi) is transport of passengers in any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charges from the service

recipient. Evidently though both the entries deal with motor vehicles for carrying passengers, the entry at Sl.No.8(vi) is a general entry whereas the entry at Sl.No.8(ii)(b) is the specific entry, i.e., Air Conditioned Stage Carriage. And it is the principle of interpretation of statute that general things do not derogate from special things and therefore that special provision prevails over the general provision. This rule is applicable even to the special provisions and general provisions within the same Act if it is not possible to reconcile two provisions in a legislation; and statute laying down general scheme of operation has to make room for a special statute for which a separate and exclusive field is carved out.

This legal principle of "*Generalia specialibus non derogant*" has been upheld in a catena of case law declared by the Hon'ble Supreme Court of India, of which the land mark cases are:

- a) Pankajakshi Vs. Chankrika (2016) 6 SCC 157 (SC 5 member Constitution bench].
- b) JK Cotton Spg. And Wvg. Mills Vs. State of UP – (1961) 3 SCR 185 = AIR 1961 SC 1170 – Para 9.
- c) Belsund Sugar Co. Ltd., Vs. State of Bihar (1999) 9 SCC 620 = AIR 1999 SC 3125 = 1999 AIR SCW 3074 (SC 5 member Constitution Bench).

As the applicant has stated that they will be in the business of passenger transport in Air conditioned buses as stage carriages, the applicable entry in view of the above discussions is Sl.No.8(ii)(b) of Notification No.11 of 2017, dt: 28-06-2017.

Further they are liable to pay tax at the rate of 2.5% under CGST & SGST respectively if they are not claiming any ITC on goods and services used in supplying service in the said entry.

Further there is no exclusion of services from other taxable persons in the same line of business from this condition, as the entry clearly mentions that ITC should not be taken on "Goods & Service used in supplying the service". Therefore if they are recipient of services from other suppliers who are in the same line of business and would like to claim a lower rate of tax under Sl.No.8(ii)(b), they cannot claim the credit of input tax charged on services from these other suppliers of similar service.


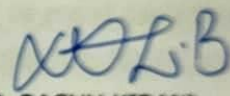
In view of the above discussion and facts of the case, the entry Sl.No.8(vi) is not applicable to the nature of business of the applicant.

8. In view of the observations stated above, the following ruling is issued :

Advance Ruling

Questions	Ruling
1 (A) Whether the rate of GST of 5% (2.5% each towards CGST & SGST) as per Sl.No.8(ii)(b) of Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017 with the condition that input tax credit is not allowed on goods and services.	ITC is not allowed to be claimed if concessional rate of 5% GST is opted to be paid on service supplied under Sl.No.8(ii)(b) of Notification No.11/2017.
1 (B) Whether input tax credit on inward	Input tax credit is not allowed on any goods

supply of services received from the suppliers who are in the same line of business as this condition is not mentioned against the said serial no.	or services received by the applicant if tax is paid at the rate of 5% GST.
2 (A) Whether the rate of GST 5% (2.5% each towards CGST & SGST) as per Sl.No.8(vi) of Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017 with the condition that input ax credit is not allowed on goods and services used in our outward supply of services other than that of similar inward supply of services received from another service provide	This entry is not applicable to the business of applicant.
2 (B) Whether option of 12% (6% each towards CGST & SGST) with no conditions attributed to it is applicable.	This is not applicable to the business of the applicant.

 (S. V. KASI VISWESWARA RAO) Addl. Commissioner (State Tax)	 (B. RAGHU KIRAN) Addl. Commissioner (Central Tax)
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[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
M/s. Sri Krishna Logistics 37-1-169-43/9, 401,
Lakshmi Sai Residency Lambadi Donka, Near Power office,
Ongole, Prakasam – 523 001 Andhra Pradesh.

Copy submitted to :
1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax),Secenderabad Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004

Copy to:
1. All Joint Commissioner's (ST) in the State of Telangana
//t.c.f.b.o//

Superintendent (Grade-I)