

**GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD - 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/48/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/26)

Date: 27-08-2021

Name and address of the applicant	:	M/s. Gensol Ventures pvt.ltd., A-2, Block 12, Palladium, Corporate Road, Prahladnagar, Ahmedabad- 380015.
GSTIN of the applicant	:	24AAGCG7674K2Z4.
Date of application	:	23-7-21.
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of a notification issued under the provisions of the Act. (c) Determination of time and value of supply of goods or services or both. (e) Determination of the liability to pay tax on any goods or services or both. (f) Whether applicant is required to be registered.
Date of Personal Hearing	:	12-8-21.
Present for the applicant	:	Shri Devam Sheth, CA

BRIEF FACTS:

The applicant M/s. Gensol Ventures pvt.ltd intends to own, develop an electronic/digital platform for booking of cabs. The applicant vide submission dated 13-8-2021 submitted that the drivers will list their electric motor vehicles on the proposed electronic platform/App for booking by the customers for the passenger transportation services; that E-Commerce Operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce and considering this, the applicant can be termed as a E-Commerce Operator; that the Electric Motor Vehicle operated by the Drivers will be in connection with Central Office and can be tracked through Global Positioning System(GPS) or General Packet Radio Service(GPRS) and qualify as radio taxi.

2. The applicant further submits that as a business measure, it offers discounts to the customers for the passenger transportation service(cab service) provided by the drivers and the consideration charged and collected by Gensol from the customer is after deducting such discount amount; that an amount equivalent to the discount offered to customer is contributed out of the applicant's pocket and this discount is recorded as a 'marketing expenditure' in the books of account of the applicant; that the applicant will charge an amount towards commission by issuing a tax invoice on the Drivers for providing a digital platform in order to get connected with the potential customers; that the applicant will remit an amount to the Driver towards passenger transportation service provided by reducing an amount recoverable from the Drivers towards commission. The applicant has enclosed a copy of Draft Agreement between them and the Drivers (T&C). The applicant has cited the following example:

3. The applicant has submitted that the key steps involved in the process of booking of cab, invoicing and collection of consideration are set out as follows:

- a) Customer uses the electronic/digital platform of the applicant to book a cab.
- b) The digital platform connects the customer with cabs listed by Driver/s.
- c) Driver/s provides the passenger transportation service.
- d) Upon completion of the ride, the applicant raises a tax invoice on the customer and collects the entire consideration from the customer and will be held liable to pay GST. This is as per Section 9(5) of the CGST Act, 2017 read with Notification No.17/2017-Central Tax(Rate) dated 28-6-2017.
- e) The applicant charges commission to the Driver/s for providing digital platform to get connected with the potential customers.
- f) Customer pays to the applicant for the ride charges.
- g) The applicant remits the amount to Driver/s by deducting amount towards commission.
- h) The applicant will pay applicable GST to the Government on ride charge as per Section 9(5) and commission on forward charge.

4. Questions on which Advance Ruling sought.

The applicant has sought Advance Ruling on the following questions:

1. *Whether the applicant is liable to be registered and classified under the Category of E-Commerce Operator?*
2. *Whether the applicant is liable to pay or discharge Goods & Service Tax(GST) in accordance to Section 9(5) of the CGST Act, 2017”*
3. *If answer to Q 2 is yes, what shall be the value of supply for passenger transportation service on which Goods and Service Tax(GST) be charged?*
4. *What shall be Rate of Tax and Service Accounting Code for the services supplied in terms of passenger transportation service under Goods & Service Tax Law?*

5. The applicant has submitted as follows:

For Question-1

- (i) According to Section 2 of the CGST Act, 2017 the definitions of electronic commerce and electronic commerce operator are as under:

(44) “electronic commerce” means the supply of goods or services or both,including digital products over digital or electronic network;

(45) “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

- (ii) Pursuant to aforesaid definition, it can be said that the applicant squarely falls under the category of Electronic Commerce Operator and activity conducted in form of electronic commerce which is performed over electronic network.

- (iii) Clause(iv) of Section 24 of the CGST Act, 2017 reads as under:

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

(iv) person who are required to pay tax under sub-section (5) of section 9;

In the instant case, the applicant being the person required to discharge the amount of tax under subsection (5) of Section 9 of this Act needs to obtain compulsory GST registration.

For Question 2:

- (iv) The levy of GST is under Section 9(1) of the CGST Act, on all intra-state supply and under Section 5(1) of the IGST Act, 2017 on all inter-

state supply of goods or services or both. The scope of the term supply is contained in Section 7 of the CGST Act. In Section 7(1) of the CGST Act, 'supply' has been defined to include all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Given this statutory framework, the sine qua non for the levy of GST is as under:

- a. Supply of goods or services.
- b. That is made in the course or furtherance of business.
- c. Which is for a consideration.

(v) Section 9(5) of the CGST Act, 2017 reads as under:

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

(vi) Here, pursuant to aforesaid subsection of Section 9 of the CGST Act, 2017 which makes it clear that the applicant shall be held liable to discharge the amount of tax as if he is the supplier under the provisions of this Act for the services supplied through the electronic platform i.e. App. On recommendations of the Council, the Government may notify the specific categories of services to which Section 9(5) of the CGST Act, 2017 be applicable. In this regard, Notification No.17/2017-Central Tax(Rate) dated 28-6-2017 reads as under:

G.S.R (E).- In exercise of the powers conferred by sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that in case of the following categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator –

(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;

(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

Explanation.- For the purposes of this notification,- (a) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in twoway radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

(vii) In the present case, the applicant thus steps into the shoes of the 'supplier' of service i.e. Driver/s therefore, the liability to raise invoice, collect the consideration, discharge GST, file the GST returns etc. is legally cast on the applicant. Accordingly, the applicant is liable to pay tax on the transaction value of transportation service in terms of Section 15(1) of the CGST Act. The GST is to be applied and remitted to the exchequer on the taxable value after discount and so, the applicant is to pay GST on the amount charged to customer (service

recipient), which is the consideration and is paid by the service recipient. Section 9(5) of the CGST Act read with Notification No.17/2017-Central Tax(Rate) dated 28-6-2017 in very clear terms state that where transportation services are supplied through an electronic commerce operator, then all the provisions of the CGST Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services. It is well settled position in law that taxing statutes must be read in a strict manner without adding or deleting words (refer CCE, Pondicherry vs. ACER India Ltd.[2004(172)ELT.289(SC)], Bansal Wire Industries Ltd. vs. State of UP [2011 (269) ELT.145(SC)] and Hemraj Gordhandas vs. H.H.Dave, Asst.CCE& C [1978(2) ELT] 350(SC)]. Therefore, by a strict interpretation of Section 9(5) of the CGST Act, the applicant steps in to the shoes of Driver/s and becomes the supplier liable to pay tax for the transportation service. Further, all the provisions of the CGST Act becomes applicable to the applicant being the electronic commerce operator, as if he is the supplier.

For Question 3:

- (viii) The applicant is required to discharge the amount of tax on the value of supply of services provided as per Section 15 of the CGST Act, 2017. GST is to be discharged on the transaction value as per Section 15(1) of the CGST Act which is the price actually paid or payable for the 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. There are certain inclusions and exclusions that are prescribed in law. Section 15(3) of the CGST Act, relating to discount, provides that discounts given before or at the time of supply recorded in the invoice, can be reduced from the value of supply. Section 15(3) reads as under:

15. (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).....

(3) The value of the supply shall not include any discount which is given--

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

- (ix) Upon referring to subsection (1) of above section, it categorically states that transaction value shall be the value of supply on which tax be leviable in terms of Section 9(1) of the CGST Act, 2017. Given the above statutory provision, GST is not applicable on the value of discount, which is recorded in and depicted on the invoice, provided by the supplier at the time of supply. In this context, GST flyer dated 1-1-2018 issued by the Central Board of Indirect Taxes and Customs(CBIC) clarifies that discount such as trade discount, quantity discount etc. are part of the normal trade and commerce, therefore pre-supply discounts i.e. discounts recorded in the invoice have been allowed to be excluded while determining the taxable value. In the current scenario, the applicant being classified as supplier of services in reference to Section 9(5) of the CGST Act, 2017 intends to offer discount at the time of supply of services on the ride charges to the customers. Hence the applicant stands liable to pay the amount of

tax on the value of supply determined by Section 15(1) & 3(a) of CGST Act, 2017 which shall be net of ride charges.

- (x) Moreover, on perusal of subsection(3) of above section, it categorically states that the value of supply shall not include amount of discount if it is offered before or at the time of supply if the same is duly recorded in the invoice issued. The applicant in its discretion offers discount to the customer, which by virtue of Section 15(3) of the CGST Act is not liable to GST. GST is not applicable on the discount offered to the customer by the applicant, in terms of Section 15(3)(a) of the CGST Act. The amount equivalent to discount, which is remitted by the applicant to Driver/s, and recorded as a marketing expense in the books of account of the applicant is not liable to GST since such payment and indeed transaction is out of the pale of and definition of 'supply' under Section 7 of the CGST Act. The discount offered by the applicant to a customer at the time of supply, cannot be subjected to GST.
- (xi) In the present scenario, the arrangement between the applicant and the Driver/s is such that the applicant collects the consideration(after discount) from the customer and remits total consideration to Driver/s. In this situation where discount is offered by the applicant to customer, and Driver/s does not bear (the expense of) discount offered since it is offered by the applicant. And so, the applicant remits the entire value of supply(without reducing the discount amount) to Driver/s. In other words, the remittance made by the applicant to Driver constitutes of two components: (a) amount collected from the customer (b) amount equivalent to the discount offered to the customer, which is a marketing expense for the applicant, and contributed by it in the present case. In the instant case, marketing expenses (of the applicant) paid by the applicant to Driver cannot be said to be consideration for or towards any service by Driver, since no reciprocal activity is performed by Driver in order to receive such compensation. The Bombay High Court, in Bai Mamubai Trust & Others vs. Suchitra [2019(31)GSTL 193(Bom)] has held that enforceable reciprocal obligations are essential aspect of a supply. Similarly, the CESTAT in Ruchi Soya Industries ltd. vs. Commissioner of Customs, Central GST and Excise, Indore [TS-301-CESTAT-2021-ST] in context of service tax law, held that it is essential to establish the basic elements for levy of tax i.e. service provider, services receiver, payment of consideration from service recipient to service provider, services etc. In the absence of services, the relationship of service provider and recipient, tax cannot be applied and levied.

For Question-4:

- (xii) Relevant portion of Notification No.11/2017-Central Tax(Rate) dated 28-6-2017 reads as under:

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (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:-

Sl.No.	Chaper	Description of Service	Rate	Condition
8.	Heading 9964(Passenger transport service)	(ii) Transport of passengers, with or without accompanied belongings by- (a) air conditioned contract carriage other than motorcab; (b) air conditioned stage carriage; (c) radio taxi. Explanation.- (a) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988); (b) "stage carriage" has the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988) ; (c) "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).	2.5	Provided that credit of input tax charged on goods or services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
		(vi) Transport of passengers by motorcab 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, 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 [Please refer to Explanation no. (iv)]
			6	-

(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.

(xiii) Entry No.8(ii) is the 'specific entry' in so far as the transportation services is concerned, since it deploys words 'transport of passengers by radio taxi'. 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 GPS or GPRS. Entry 8(ii) and 8(vi) (for 5% and 12%) are competing entries as description of service for entry 8(vi), which deploys words 'by a motor vehicle' includes radio taxi. The applicant is of the view that the rate of tax on services supplied through electronic commerce operator shall be leviable @5% (CGST – 2.5%, SGST – 2.5%) and Service Accounting Code shall be 996412-Taxi services including radio taxi and other similar services.

- (xiv) On the basis of fact, legal provision and notifications, the summary of the applicant's interpretation to the aforesaid questions are as under:

Q.No.	Question	Applicant's view
1.	Whether the applicant is liable to be registered and classified under the Category of E-Commerce Operator?	Liable to be registered in view of Section 24(iv) of CGST Act, 2017.
2.	Whether the applicant is liable to pay or discharge Goods & Service Tax(GST) in accordance to Section 9(5) of the CGST Act, 2017"	Liable to pay GST as if he is the supplier of service i.e. passenger transportation services.
3.	If answer to Q 2 is yes, what shall be the value of supply for passenger transportation service on which Goods and Service Tax(GST) be charged?	Value of supply =Ride charge less Discount in view of Section 15(1) & (3)(a) of CGST Act, 2017.
4.	What shall be Rate of Tax and Service Accounting Code for the services supplied in terms of passenger transportation service under Goods & Service Tax Law?	Rate=5% (CGST-2.5% SGST-2.5%) Service Accounting Code 996412 as per Scheme of Classification.

Personal Hearing:

6. Shri Devam Sheth, CA appeared for the hearing (Video Conferencing) on 12-8-2021 and reiterated the contents of the application. Shri Devam Sheth, CA submitted that the applicant is aware of the liability of 18% GST on the said commission charged on Driver. And that the subject application is concerning the GST liability on the component pertaining to passenger transportation service.

FINDINGS:

7. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

8. We have carefully considered all the submissions made by the applicant. We find that the applicant has expounded the position of law and has arrived at its conclusions as reflected at Paragraph 5(xiv). We agree with the submission of the applicant and find that the applicant has enunciated and expounded the position of law crystal clear with respect to subject.

9. We concur with the applicant's views and thereby pass the Ruling as follows:

RULING

1. M/s Gensol is an e-commerce operator and shall be liable to be registered.
2. M/s Gensol is liable to pay GST as per Section 9(5)CGST Act.
3. The value of supply for passenger transportation service shall be the net amount arrived after the deduction of discount (to be provided by M/s Gensol to the customer) from the gross value.
4. The SAC for subject supply is 996412. The GST shall be leviable @ 5% (2.5% CGST + 2.5% SGST) subject to the fulfilment of the condition at Entry No.8 (ii) of cited Notification11/2017-CT(R) dated 28-6-2017.

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member(C)