



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521151)

Present:

Sri Suresh Kishnani (Member) (Central Tax)

Sri S. Ravi Shankar Narayan (Member) (State Tax)

The 24th day of January, 2022

Order /AAAR/AP/04 (GST)/2022

| | | |
|---|-----------------------------------|--|
| 1 | Name and address of the appellant | The Principal Commissioner Central Tax, Guntur CGST Commissionerate. |
| 2 | GSTIN | 37AAGFA3527J2ZF |
| 3 | Date of filing of Form GST ARA-02 | 08.11.2021 |
| 4 | Hearing (Virtual) | 14.12.2021 |
| 5 | Authorized Representative | Shri G. Rama Krishna Raju Yadav, Joint Commissioner of Central Tax, Guntur CGST Commissionerate, |
| 6 | Jurisdictional Authority – Centre | Assistant Commissioner (ST) Krishnalanka Circle, Vijayawada-II Division |

(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).

The Principal Commissioner, Central Tax, Guntur CGST Commissionerate (hereinafter referred to as appellant) filed an appeal in case of M/s. Andhra Pradesh State Road Transport Corporation (APSRTC), Pandit Nehru Bus Station, RTC House, 1st Floor, Bhaskar Rao Pet, Vijayawada as per Rule 106(2) of CGST Rules, 2017 against the Advance Ruling issued under sub-section (6) of section 98 in FORM GST ARA-03 and no fee shall be payable by the appellant for filing the appeal. The appeal dated: 08.11.2021 is filed contending the Ruling passed by the Authority for Advance Ruling, A.P vide Ruling AAR No.25/AP/GST/2021 dated 20.07.2021.

1. **Background of the Case:**

1.1 The appellant i.e., Principal Commissioner Central Tax Guntur CGST Commissionerate filed an application in Form GST ARA-03 on 08-11-2021 before the Appellate Authority for Advance Ruling, Andhra Pradesh seeking clarification in case of M/s Andhra Pradesh State Road Transport Corporation, .A.P

1.2 M/s Andhra Pradesh State Road Transport Corporation, (APSRTC) was established on 11th January, 1958 as per The Road Transport Act, 1950 by G.O Ms No.36, Home (Transport – IV) dated 06-01-1958. As a consequence of bifurcation of the erstwhile United State of Andhra Pradesh into Telangana and Andhra Pradesh, APSTRC (erstwhile) was bifurcated into TSRTC and APSRTC, with some issues still pending regarding the division of assets and liabilities between the two corporations.

1.3 APSRTC, though operating under the Public Transport Department (PTD) of Government of Andhra Pradesh, is completely an independent entity with operational autonomy and operates as an independent corporation with its own sources and application of funds. The Central Government owns a stake of 31% with Rs.35.62 Crores as capital contribution and the State Government of Andhra Pradesh (GOAP) owns the balance stake of 69% with a capital contribution of Rs.79.53 Crores.

1.4 Of late, the Government of Andhra Pradesh vide GO MS NO 50 dt 30-12-2019, had taken up the process of merger of establishment of APSRTC with the State Government and created the "Public Transport Department" under the administrative control of "Transport Roads and Buildings Department" and declared the 'Public Transport Department' as 'Head of the Department' to exercise financial powers. Consequently, vide GO MS NO 51, dt 31-12-2019 the employees of APSRTC were absorbed into Government Payroll.

1.5 Subsequently, the State Government decided to take all the buses, establishment and infrastructure on lease so that the total public transport can be undertaken by Government of Andhra Pradesh directly, through the Department of PTD.

1.6 In connection With the above backdrop, the applicant approached the Authority for Advance Ruling seeking clarification on the following issue.

Question: Whether the transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate)?

The Authority for Advance Ruling Andhra Pradesh in its orders in **AAR No.25/AP/GST/2021 dated 20.07.2021** held:

- The transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate).

2. Grounds of Appeal:

2.1 The appellant states that M/s. Andhra Pradesh State Road Transport Corporation, (APSRTC) declared their nature of business activities as 'Leasing business, service Provision, Recipient Goods or Services, others, works Contract, Office /Sale Office, Supplier of Services and warehouse/Depot', in the 'Registration Certificate', while it is declared as the activity of 'undertake to provide the public transport' in ARA-01 Application in front of the Authority for Advance Ruling.

2.2 As per Entry No.22 of Notification No. 12/2017 Central Tax (Rate) "State transport undertaking" has the same meaning as assigned to it in clause (42) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

"Section 2 (42) of Motor Vehicles Act, 1988: 'State Transport undertaking' means any under taking providing road transport service, where such undertaking is carried on by,

- The central Government or State Government*
- Any Road Transport Corporation established under Section 3 of the Road Transport Corporation Act, 1950 (65 of 1950)*
- Any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments:*
- (Zilla parishad or any other similar local authority)*

Explanation: For the purpose of this clause, 'road transport service' means a service of motor vehicles carrying passengers or goods or both by road for hire or reward:

From the definition, the road transport service provided by any state undertaking carried on by the above authorities mentioned at Sl.no.1 to 4 is exempted vide Entry no.22 of Notification Noo.12/2017 Central Tax (rate). In

the instant case the APSRTC are the "provider" of the transport service i.e. hiring of buses and the Public Transport Department (PTD) of Government of Andhra Pradesh is the "recipient". Both the APSRTC (having 69% capital contribution by Andhra Pradesh State Government) and PTD which will operate under the Administrative control of Transport, Road and Building Department, Government of Andhra Pradesh, belong to Andhra Pradesh State Government only and thus, 'service provider' and the 'service recipient' in the instant case are related and no much distinction found between them. Consequently, the issue gives wide scope for interpretation and the exemption can't merely be extended.

2.3 The Government of Andhra Pradesh through Public Transport Department (PTD) has taken over all the buses, establishments and infrastructure on "lease basis. Accordingly, the service extended by the APSRTC to PTD is considered to be 'leasing of movable and immovable assets' and it does not fall under category of "hiring service or services by way of giving on hire'. Even the Applicant i.e., APSRTC had no clarity on classification of the service and had approached the AAR for ruling declaring their service as "hiring/leasing" of buses. The AAR has not discussed regarding the related party transaction between APSRTC and PTD and the nature & classification of the service extended by APSRTC to PTD. Therefore, the AAR Ruling appears to be lack of merits and the provisions of Notification No. 12/2017 Central Tax (rate) are not made applicable to this case as the service extended by APSRTC to PTD does not fall under category of 'services' as prescribed in the said notification.

2.4 Whereas, the AAR considered the hire services provided by APSRTC to the 'Public Transport Department' (PTD) which will operate under the Administrative control of Transport, Road and Building Department, Government of Andhra Pradesh as 'services' by the way of giving on hire to a State Transport Undertaking'. Further the AAR also considered the Public Transport Department (PTD) as 'undertaking' meant for the transport carried by the State Government relied upon definition available in Companies Act, 1962.

2.5 Whereas, the notification prescribes only 'state transport undertaking' and the definition of 'state transport undertaking' is defined in Motor Vehicles Act, 1988. When there is a clear definition available, relying upon any other

definitions will not be tenable. It is pertinent to mention that a taxing statute has to be interpreted in the light of what is clearly expressed. Therefore, the AAR's ruling that the Public Transport Department as 'state undertaking' is not tenable in Law. It is undisputed fact that the Public Transport Department (PTD) is purely a Department which will operate under the administrative control of Transport, Road and Building Department, Government of Andhra Pradesh and it does not fall under ambit of Notification No.12/2017 Central Tax (Rate) dated.28.06.2017.

2.6 The law in respect to interpretation of exemption notification is well settled. In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the notification, does not mean that the benefit can be extended to legal entities not referred to in the notification as there is no equity in matters of taxation. An exemption has got to be construed strictly however fairly. There's no scope of extending the words and expressions utilized in the notification on the premise of analogy or on equitable consideration.

In view of the above, it appears that the AAR ruling dt: 20.07.2021 giving exemption under entry no.22 of notification no.12/2017 Central tax (rate) appears to be not correct.

3. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 14.12.2021. On behalf of the appellant, the authorized representative, Sri G. Rama Krishna Raju Yadav, Joint Commissioner of Central Tax, Guntur CGST Commissionerate, attended and presented the additional submissions. On behalf of the tax payer, CA Siva Prasad A attended and sought two weeks' time for filing additional submissions and the same were submitted on 28.12.2021.

4. Additional submissions filed by the Principal Commissioner of Central Tax, Guntur CGST Commissionerate, Guntur

4.1 As per the submissions of the APSRTC, the Government of Andhra Pradesh proposes to take all the buses, establishments and infrastructure on lease so that Public Transportation can be undertaken directly through its arm

of Public Transportation Division (PTD) under the administrative control of Transport, Roads and Buildings Department. Both APSRTC and PTD are separate legal entities. And there must be some lease agreement/ contract etc. between them stipulating the services to be rendered, period of service, payments to be made, taxes payable, etc.

4.2 Whereas, the APSRTC and PTD have, so far, not entered into any lease agreement. This fact was informed by the APSRTC vide their letter dated 08.12.2021 addressed to the Assistant Commissioner of Central Tax, Amaravathi CGST Division, Vijayawada. Thus, there is no lease agreement between APSTRC and PTD in this matter. In the absence of lease agreement, the classification of the service, its tax liability and eligibility for the exemption, if any, under Entry 22 of Notification No. 12/2017 Central Tax (rate), can't be done. It appears that merely based on the question raised by the APSRTC, the AAR given the ruling vide AAR No.25/AP/GST/2021 dated 20.07.2021 without going through the basic facts in this case. Therefore, it is not legally tenable and needs to be set aside.

5. Additional submissions filed by M/s APSRTC:

5.1 It is contented by the Central GST authorities that the benefit sought to be extended under the notification 12/2017 is in relation to a State Transport Undertaking and when the State Government, i.e., Public Transport Department takes on hire the benefit cannot be extended as the State government is not an 'undertaking'.

In this regard, it is reiterated by M/s APSRTC, that the term 'state Transport undertaking' is defined in the very same notification 12/2017 itself and in view of the express definition, it shall be mandatorily applicable.

a. *As per definitions 2(zzk) of notification N. 12/2017 "state transport undertaking" has the same meaning as assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);*

Hence, the meaning of the words 'State Transport undertaking' shall necessarily be drawn from the Motor vehicles Act, 1988.

b. *Section 2(42) of Motor Vehicles Act, 1988 defines State Transport undertaking "State transport undertaking" means any undertaking providing road transport service, **where such undertaking is carried on by,**—*

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments

(iv) Zilla Parishad or any other similar local authority.

Explanation.—For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

The above definition clearly contemplates not only the possibilities of the undertaking being run by a 'Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950)', but also being undertaken by State Government or Central Government or a Municipality or Zilla parishad themselves.

5.2 The application of the above definition clearly mean that if the public road transport service is undertaken by State government itself, then the same is also covered by the definition 'State Transport undertaking'.

It appears that the contention of the CGST office is that an 'undertaking' shall be one with a separate legal entity and physical existence and as such State government cannot be an undertaking. In this regard we humbly submit in view of the above explicit definition of 'state road transport' undertaking for the limited purpose of motor vehicle act and the provisions of GST Act which refer to such definition, the same also be considered as an undertaking.

5.3 Besides the above and with prejudice to the above argument, it is further submitted that 'undertaking' denotes an activity but not any legal entity or a physical form. There is no such legal requirement. The words 'unit', 'undertaking', and 'office' derive their meaning from the functional activities that are performed, but need not indicate any physical structure or a legal identity as such.

It is finally prayed by the tax payer to extend the due relief extended by AAR.

6. Discussion and Findings:

We have gone through the records of the appeal, facts of the case, and also considered the written and oral submissions made at length by the appellant and the party in dispute, M/s. Andhra Pradesh State Road Transport Corporation (APSRTC), as well, in light of the ruling pronounced by the AAR. On perusal of the information at hand, it is observed that the main issue of

contention is whether the transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for the exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate). The AAR has taken the stance that the activity is eligible for exemption.

6.1 In paragraphs 2.1 and 2.2, the appellant contends that APSRTC, the 'provider' of the transporter service and the Public Transport Department (PTD) of Govt. of A.P., the 'recipient' of service are related and no much distinction found between them. In instant case the provider and the recipient of the transport service are two different legal entities.

6.2 In paragraph 2.3, the appellant contended that the classification of services as 'leasing of movable and immovable assets' and does not fall under category of 'hiring service or services the way of giving on hire'.

In this context, it is pertinent to discuss the rules of classification of services before arriving to a conclusion.

The Central Board for Indirect Tax and Customs issued "Explanatory Notes to the Scheme of Classification of Services" on 12th June 2018 wherein it has been specified that -

"The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification. 2. The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UN CPC.

*The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, **the most specific description shall be preferred over a more general description.**"*

In the instant case, the appellant classifies the transaction as 'leasing of movable and immovable assets', which is more of a general description. Whereas, the lower authority classified the same under 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 transport of goods."

When we peruse the relevance of both the entries, Heading 9966 fits into the most specific description and should naturally be preferred over the general description as suggested by the appellant.

6.3 In paragraphs 2.4, 2.5 and 2.6 it is contended by the appellant that the benefit extended under the notification No.12/ 2017 Central Tax (Rate) Dated:28.06.2017 is in relation to a 'State Transport undertaking' and when the PTD takes on hire, the benefit cannot be extended as it is a Government Department and not an undertaking.

In the instant case, the term 'State Transport undertaking' is defined in the very same notification 12/2017 itself,' and it is presented as under:

"a. As per definitions 2(zk) of notification No. 12/2017 "state transport undertaking" has the same meaning as assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);"

Hence, the meaning of the words 'State Transport undertaking' shall mandatorily be drawn from the Motor vehicles Act,1988.

"b. Section 2(42) of Motor Vehicles Act, 1988 defines State Transport undertaking

*"State transport undertaking" means any undertaking providing road transport service, **where such undertaking is carried on by,—***

*(i) the Central Government or **a State Government;***

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments

(iv) Zilla Parishad or any other similar local authority.

Explanation.—For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;"

The above definition clearly envisages the possibility of this service being run / carried on by the Central Government or a State Government. In the instant case, the PTD, the state government department which is running this service shall by definition be termed as the 'State Transport undertaking'.

In view of the foregoing, we concur with the opinion of the lower authority.

ORDER

We confirm and uphold the ruling of the AAR.

Sd/- Suresh Kishnani
Chief Commissioner (Central Tax)
Member

Sd/-Ravi Shankar Narayan
Chief Commissioner (State Tax)
Member

//t.c.f.b.o//


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To

1. The Principal Commissioner, Central Tax, Guntur CGST Commissionerate, Guntur **(By Registered Post)**
2. M/s. Andhra Pradesh State Road Transport Corporation, Pandit Nehru Bus Station, RTC House, 1st Floor, Bhaskar Rao Pet, Vijayawada-520001, Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Krishnalanka Circle, Vijayawada-II Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Nidadavole Range, Eluru Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Chief Commissioner of Customs & Central Tax, O/o The Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.A.P. **(By Registered Post)**