

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/S.98 OF THE
GOODS AND SERVICES TAX ACT, 2017

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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ORDER No. 02/ARA/2024 Dated: 27.03.2024

1. *Any appeal against this Advance Ruling order shall lie before the Tamilnadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*

2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. *In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*

4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*

GSTIN Number, if any / User id		33AAICB5670J2ZI
Legal Name of Applicant		M/s. Balat Enterprises Private Limited
Registered Address / Address provided while obtaining user id		Floor 6, Block A Flat 5, Jains Inseli Park, Old Mahabalipuram Road, Padur, Kancheepuram, Tamil Nadu, 603103.
Details of Application		GST ARA – 01 Application Sl.No.84/2023, dated 28.04.2023
Jurisdictional Officer		Centre: Chennai Outer Commissionerate; Division: Tambaram
Concerned Officer		Division: Chengalpattu Circle: Kelambakkam Assessment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	<p>The applicant is a Chennai based startup engaged mainly in providing a mobile based digital platform "VYAVSHAY" business to consumer model for small entrepreneurs to reach out bigger market easily at their own terms and conditions. The business operations provided by the applicant are farm equipment's, transportation services, skill-based services, other additional service.</p> <p>When any entrepreneur signs up for their services to the applicants' platform, they fix their own rates and areas of operation with basic registration information. The applicants' 'Partners' are responsible to collect payment directly from the end customers and generate their own tax invoices.</p> <p>Further, the applicant acts as a link to connect the platform of entrepreneurs to customers for facilitating various business services.</p>
Issue/s on which advance ruling required		<ol style="list-style-type: none"> 1. Applicability of a notification issued under the provisions of this Act. 2. Determination of the liability to pay tax on any goods or services or both.

Question(s) on which advance ruling is required	<p>1. Whether applicant satisfies definition of e-commerce operator and nature of supply as in section 9(5) of CGST Act, 2017 w.r.t notification no. 17/2017 dated 28.06.2017.</p> <p>2. On which segment of the transaction would the applicant be liable to pay and collect tax?</p>
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1) At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2) The applicant submitted a copy of challan dated 10.03.2023 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 10.03.2023 was physically received on 11.04.2023 as mandated under Rule 107A.

3.1) Balat Enterprises Private Limited (in short 'Applicant') is a Chennai based startup engaged mainly in providing a mobile based digital platform "VYAVSHAY"-business to consumer model for small entrepreneurs to reach out bigger market easily at their own terms and conditions. The applicant has launched mobile based digital platform "Vyavshay" (hereafter referred to as app) - a business to consumer model. The business provides an online mobile platform to entrepreneurs where various business offerings are listed on the app and end consumer can avail the listed services. At present, the app is offering a) Farm equipment services, b) Transportation services, skill-based services. This list is dynamic and in future they may add similar services in their offering or update as per the market demand.

3.2) The applicant does not charge any fees relating to joining i.e., subscription/membership fee during the process of signing up. The applicant charges the entrepreneur (ie., who sign up themselves on the app- partner) after completion of the services, a fixed rate based on usage of the app. Every user desirous of availing the applicant's app (Vyavshay) services shall make an application online in the prescribed app in the prescribed form duly filled and shall enter into an agreement subject to terms and conditions. These terms of service apply to all users of the Vyavshay app. Information provided by their users through the Vyavshay service contain links to third party i.e, partners that are not owned or controlled by Vyavshay. Vyavshay has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites.

3.3) As per the business model of the Applicant 'Users' are individuals who use the 'Vyavshay' mobile platform to request various services, such as transportation and other customer – focused offerings, 'Partners' are entrepreneurs of small and medium-sized business who onboard their services with the 'Vyavshay mobile platform and 'Associates' are dedicated individuals responsible for delivering services within the 'Vyavshay' network. The partner enters into the business transaction with the users i.e the end consumers and the associates supply the services to the customer. The contract of supply such as quality of work or providing the said service, etc., are mutually agreed upon by the partner and applicant Vyavshay (the applicant) does not have any responsibility for supply of services and does not have any concern about consideration. Moreover, the consideration is charged by the partner (service owner) and other service-related billing directly happens between the partner (service owner) through associates and recipient of the service (customer). Also, if there is any dispute between the supplier of goods or services or both and recipient is purely between them and the applicant is not responsible for the same.

3.4) The applicant stated that they acts as a mere platform to link and help reach of small business owners with businesses and customers across business verticals, whilst maintaining a digitally safe ecosystem. Any person who provides service can register himself on the app. This platform is designed by the applicant with the motive to generate employment for small entrepreneurs and associates where they can link with consumers, who can book their services and avail such benefits at better rates. The charges are also collected by the applicant from the partners only based on usage of the app. The applicant discharges output GST on the amount received by the partner. Also, there is no other link between the supplier of services and the end consumers with the applicant. The consideration for supply of services is not routed through the applicant nor does he liaison in the process or take up responsibility of supply of services between the partner member and its customers.

3.5) On interpretation of law, the applicant, states that on combined reading of the definition of e-commerce and e-commerce operators and Section 9(5), it is understood that for a person to be classified as an "e-commerce operator", he should own and manage a platform and the supplies should be made through the said e-commerce platform. The applicant owns the Vyavshay app where partners are free to update the goods and services they wish to sell through the application. The partner of the "APP" enters into business deals/transactions on their own with their clients and business associates supply of goods or services or both, the applicant is merely linking partners and end consumers. As per section 9(5), in the given case 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 section shall apply to such electronic commerce operator. Applying the principle enumerated above in the instant case, they don't fulfill the conditions of being an electronic commerce operator as the supply of services is not through them. The crucial phrase for the applicability of the section is "supply of services through e-commerce operator".

3.6) They also states that Act or Notification doesn't define or clarify the situations of "supply of goods/services through an e-commerce operator" and thus the rules of jurisprudence and interpretation are required to understand the phrase and the word as used in common parlance. The word "through it" employed in Section 9(5) is used to indicate the method under which the supply was initiated, carried on and concluded. The dictionary meaning clearly specifies that the word through implies that the supply should be initiated, carried on and concluded by the specified method. In the instant case the "supply is not carried on" or "concluded by using our app".

3.7) The applicant drew references to business models of established e-commerce operators such as Amazon, Flipkart, UrbanClap and likewise. In case of all the e-commerce operators discussed, the following business transactions undertaken by them

a. The invoices issued for supply is by the vendor, however, has the logo of the operator is mentioned on the face of the invoice, indicating responsibility of supply.

b. Charges such as commission, shipping fees is levied by the operators such commission is calculated on the value of the goods being sold by the vendor to the end customer.

c. Collection for all supplies is done by the operator and passed on to the supplier after deduction of appropriate charges and taxes.

d. Provide support services

3.8) The applicant states that thus, in cases of electronic digital platforms such as Amazon, Flipkart, Urban clap and others, e-commerce operators own and manage the supply of services provided by or through it. The supplies on these applications are initiated, carried on, concluded using these apps and also these operators provide details such as status of goods in transit and its logistical locations. On the other hand, "Vyavshay" merely allow a display of the services viable to be supplied by partners / associates and are not involved in collection or take up responsibility for after supplies.

3.9) The applicant also contended that in common parlance, it can be concluded that for a supply to be carried out through an e-commerce operator, a certain degree of responsibility for such supply should be established, however, in the case of "Vyavshay", they do not take up any responsibility on all possible commercial fronts such as:

a. Timeline for delivery

b. Collection against supplies

c. Quality of the supplies

d. Support services in relation to the supply

3.10) The applicant also states that they only involved in linking the supplier of services and end customer for availing of such services. The supply happens independent of the applicant and the applicant doesn't take responsibility of any kind, for instance, the operational and completion of the ride in case of providing services of rent a cab services, etc. The consideration is also directly charged by the service provider to the recipient and Vyavshay has no involvement in price fixation for the service provider. The applicant doesn't fulfill the conditions stipulated in Section 9(5) of the CGST Act 2017, which is "supply of services through it", as there is no supply which is under the control of the applicant or routed through it. For instance, the applicant does not control the fare of the ride and the collection associated with completion of the ride the related fare fixation and collection is done independently by the partner from the end customer. Thus the applicant can't be held liable to collect and pay the tax as specified in Section 9(5) of the CGST Act 2017. The applicant's nature of business doesn't allow collection of the fare on behalf of the supplier.

3.11) Based on the above the applicant concludes that the services can't be deemed to have been supplied through them (APP) just because the service is initiated through the digital platform. They reiterated that the app is only a platform to link the consumers and partners and the consideration charged by the applicant from the partners is based on the usage of the app. For instance, if a partner received 5 bookings through the App on a day and the APP is charging INR 25 per booking for that service then the invoice to the Partner from the Vyavshay would be INR 125 irrespective of the final bill amount or value of the services to the User (customer).

3.12) The applicant submits that there are two segments in the transaction

A) Transaction no. 1- In this transaction, the charges are collected by the applicant from the partners based on usage of the app. The applicant discharges output GST on the amount received from the partner.

B) Transaction no.2-Another transaction happens between the partner and the end consumer, wherein the partner raises invoice to his customer for services provided & the customer pays directly to the partner.

"Vyavshay" merely allows a display of the goods or services viable to be supplied by partners and are not involved in collection or take up any responsibility for supplies. Further the applicant is only providing a platform or facility to the partner and charges based upon the usage of the app and thus their service shall be that of allowing a platform for which a consideration will be charged and thus, the value of supply shall also be the consideration charged as stated in transaction 1 i.e the fixed rate received by the partner based on usage of the app.

3.13) Based on the above interpretation of Laws / Notification the applicant interpreted that are not an e-commerce operator under 9(5) w.r.t notification no.17/2017 dated 28.06.2017 of the CGST Act, 2017 and will not be required to register and pay tax as an e-commerce operator and hence as their supply of services

is limited only to providing a platform or facility to the partner they are liable to pay tax on the consideration received from their partners.

4.1) The applicant is under the administrative control of Central Tax Authorities. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the Advance Ruling application and for comments on the issues raised.

4.2) The concerned Central authority vide letter GEXCOM/HQR/MISC/197/2023-TECH dated 11.07.2023, stated that;

- From the details submitted by the applicant along with the Advance Ruling application, it is noticed that the applicant's app is only providing a meeting ground between the service provider and the end user in other words, the applicant's app Vyavshay is a linking platform between the service provider and end user. Based on the usage of the app, the applicant collects charges from the Vyavshay Associates or Partners and on the Output, GST is being discharged. No charges are collected from the end user. The applicant does not take up responsibility for the supplies displayed in their platform.
- Further, it is also noticed from the Terms of Use by Vyavshay user, the applicant is an intermediary platform between those who want to book services and those who provide services and they do not collect the services charges on behalf of the service provider from the end user and pay the same to the service provider. Hence, it appears that they are liable to pay tax only on the consideration towards usage of app received from the associates / partners.
- That the conditions as prescribed under Sec 52 of the CGST Act 2017 for levy of tax for e-commerce operator is not satisfied as the applicant does not collect the consideration with respect to such supply. Hence, they are not liable for discharge of tax under Section 9(5) of CGST Act, 2017 w.r.t. Notification No.17/2017 dated 28.06.2017, as amended. They are liable to collect and pay the tax on the charges collected by them from their Vyavshay partners based on usage of the app, which it appears that the applicant already follows this practice only.

4.3) The State jurisdictional Officer, viz., the Assistant Commissioner (ST), Kelambakkam Assessment Circle, Chennai – 35 replied that on verification of the nature of business activities reported by the applicant, it is opined that, he falls under the definition of e-commerce operator under section 9(5) of TNGST & CGST Acts, 2017 and the State Jurisdictional officer has also stated that the questions raised by the applicant in the application are not already pending or decided in any proceedings.

PERSONAL HEARING

5.0) The applicant, was given an opportunity to be heard on 08.01.2024. Mr Jugal Dushar, Chartered Accountant, Mr Deepak Jain .G, Consultant, as the Authorised Representatives (AR) of the Applicant and Mr Prabhat Ranjan, Director appeared for the personal hearing. They reiterated the submissions made in their application and submissions made via email.

DISCUSSION AND FINDINGS

6.1) We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made vide email dated 07-12-2023 and the submissions made during the personal hearing.

6.2) The Applicant is before us seeking Advance ruling on the issue whether they satisfy definition of e-commerce operator and nature of supply as in Section 9(5) of CGST Act, 2017 w.r.to Notification No. 17/2017 dated 28.06.2017, and on which segment of the transaction would the applicant be liable to pay and collect tax?

6.3) In terms of Section 97(2) of the CGST Act 2017/TNGST Act 2017, questions on which advance ruling is sought under the Act, falls within the scope of Section 97(2)(b) and (e) of the CGST Act/TNGST Act, 2017, and therefore the application is admissible.

7.0) Coming to the part of the query, **Whether the applicant satisfies the definition of e-commerce operator?**

It is pertinent to see the definitions of e-commerce and e-commerce operator as provided in the Act, in terms of Section 2(44) and 2(45) which are reproduced below:

(i) Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

.....

(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;

7.1) As observed from the submissions made by the applicant in the Annexure-II, the applicant has launched mobile based digital platform "Vyavshay" and at present, the said app is offering below mentioned services and this list is dynamic and in future they may add similar services in their offering or update as per the market demand.

- a. Farm equipment services: Hiring or rental services of these farm equipment - Cultivator, Thresher, Reaper, Rotavator, Soil Testing services, Sprayer, Trailor.
- b. Transportation services: Cab, Passenger Auto, Pick up vans, Goods Auto, JCB
- c. Skill based services and other services: Electrician, Plumber, Driver, Carpenter.

7.2) Primarily, every user desirous of availing the applicant's app (Vyavshay) services, shall make an application online and shall enter into an agreement subject to terms and conditions. Further, as seen from the "Terms of Use - Vyavshay User", the procedure for booking of services through the "Vyavshayapp" maintained by the applicant is reproduced as follows:

"The user shall follow below steps for booking services through User App

- a. Register with their details like phone number, email and address
- b. Select the address for which they require services
- c. Provide the date and time, indicating the booking period for which they want the service
- d. Based on the availability of Partner (service provider) in their area Vyavshay App will book their service and confirm.
- e. After confirmation of booking, partner or their representative may call the user for additional information or user may connect with them if required.
- f. Actual final amount may be different from the estimated price provided earlier.
- g. The user can give feedback and rate their service at the end of service.

7.3) From the bare reading of the definitions of e-commerce and e-commerce operator it could be inferred that Electronic Commerce Operator (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce i.e. for the supply of goods or services or both, including digital products over digital or electronic network. In the instant case, as observed from the facts on record, the applicant owns and manages digital platform ("Vyavshay" APP), for the supply of services. The Partners or Service providers register the details of services to be provided by them including name, address, geo-location etc., on the said platform. The consumer/user also registers in the App specifying their requirement, which includes the type of service, date, time and location at which they actually require that service. Based on which the service provider reaches the location of the consumer to render the service and the user/consumer receives the services at their door step itself. Further, on completion of service, the user may record their feedback and rate the quality of service. Thus, the applicant facilitates the partner / service provider in supplying their service to the end user making use of the App maintained by them and enables the user to get to the door step service. Hence, the applicant squarely fits into the definition and qualifies to be an Electronic Commerce operator.

8.0) Then coming to the next part of the query, **whether the supplies offered over the said mobile based digital platform "Vyavshay" owned and managed by the applicant falls under the ambit of Section 9(5) of CGST Act, 2017 w.r.t notification no. 17/2017?**

8.1) The applicant in their interpretation of law and/or facts, has stated that the applicant acts as a mere platform to link and help reach of small business owners with businesses and customers across business verticals, whilst maintaining a digitally safe ecosystem. They also stated that charges are also collected by the applicant from the partners only based on usage of the app and the applicant discharges output GST on the amount received from the partner. Also, there is no other link between the supplier of services and the end consumers with the applicant. The applicant further states that the consideration for supply of services is not routed through the applicant nor

does he liaison in the process or take up responsibility of supply of services between the partner member and its customers.

8.2) Further, the applicant is of the view that on combined reading of the definition of e-commerce and e-commerce operators and Section 9(5), for a person to be classified as an "e-commerce operator", he should own and manage a platform and the supplies should be made **through** the said e-commerce platform. The applicant also stated that the applicant owns the "**Vyavshay** app" where partners are free to update the goods and services they wish to sell through the application. The partner of the "APP" enters into business deals/transactions on their own with their clients and business associates supply goods or services or both, the applicant is merely linking partners and end consumers.

8.3) We find that the applicant quoting the provisions of Section 9(5) of the CGST / SGST Act 2017 has stated that they do not fulfill the conditions of being an electronic commerce operator as the supply of services is not through them and the crucial phrase for the applicability of the Section is "supply of services through e-commerce operator". The applicant submitted that the Act or Notification doesn't define or clarify the situations of "supply of goods / services through an e-commerce operator" and thus the rules of jurisprudence and interpretation are required to understand the phrase and the word as used in common parlance. The applicant stated that the words "through it" in Section 9(5) is used to indicate the method under which the supply was initiated, carried on and concluded.

8.4) The applicant also submitted that the dictionary meaning clearly specifies that the word through implies that the supply should be initiated, carried on and concluded by the specified method and in the instant case the "supply is not carried on" or "concluded by using their app". Further, they added, "in cases of electronic digital platforms such as Amazon, Flipkart, Urban clap and others, e-commerce operators own and manage the supply of services provided by or through it. The supplies on these applications are initiated, carried on, concluded using these apps and also these operators provide details such as status of goods in transit and its logistical locations. On the other hand, the applicant "Vyvashay" merely allow a display of the services viable to be supplied by partners / associates and are not involved in collection or take up responsibility for after supplies. Furthermore, their charges are fixed, and they do not provide any customer support services. Thus, in common parlance, it can be concluded that for a supply to be carried out through an e-commerce operator, a certain degree of responsibility for such supply should be established, however, in the case of "Vyvashay", they do not take up any responsibility on all possible commercial fronts such as Timeline for delivery, Collection against supplies, Quality of the supplies and Support services in relation to the supply and hence the applicant is of the view that the services can't be deemed to have been supplied through it (APP) just because the service is initiated through the digital platform."

8.5) We have perused the submissions made by the applicant and examined the issue with reference to the relevant provisions of the Act to elucidate the issue on hand, as follows:

Section 9(1) of the CGST Act 2017, provides for the Levy of tax on supply of goods or services or both as below:

Section 9(1): Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

8.6) The Government, in terms of Section 9(5) of the Act authorizes/recognizes the E.Commerce Operator as deemed supplier to collect and pay the tax, in respect of intra-state supply of certain category of services as notified by the Government on the recommendations of the GST Council and the Section 9(5) is reproduced for ease of reference, as below:

*Section 9(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.

8.7) Thus, Section 9(5) of the Act of 2017 creates a statutory obligation on the electronic commerce operator considering them as the deemed suppliers in respect of certain notified services supplied through the online platform maintained by them. It is very important to note that the language employed in Section 9(5) viz., **“shall be paid” and “as if he is the supplier liable for paying the tax”**, makes it clear that the liability to pay tax on the supply is mandatorily placed on the e-commerce operator”.

8.8) The applicant relying on the dictionary meaning of the word **“through”**, interpreted that they are not liable for payment of tax under Section 9(5) of the Act, as in the instant case they have not carried on or concluded the service by using their App. However on perusal of the terms and conditions of the Vyavshay User and Vyavshay partners, it is seen that the user may select the type of service they require, from the Vyavshay App and the specific location and specific date and time at which actually they require such service have also been booked through the app. Thereafter, based on the availability of the service provider in the area of the consumer/user the Vyavshay app books the Service and confirm the provision of service. Based on which

the service provider reaches the location of the consumer to render the service and the user/consumer receives the services at their door step itself. Finally the user can give feedback and rate their service at the end of the service.

8.9) Importantly, as per condition stipulated in terms of use-Vyavshay User, "the user shall not connect with the partner or associate offline other than through the Vyavshay Application and Vyavshay shall not have any responsibility in case of such offline transactions or interaction and the information". Similarly, as per the terms of use- Vyavshay partner and Vyavshay Associates, "partner or associate shall not connect with customers offline other than through the Application mentioned and Vyavshay shall not have any responsibility in case of such offline transactions or interactions". The other condition that "the materials posted and made available on the platform are only to assist user and partner/ associate in concluding the transaction". The partner/ Associate can give feedback of customer and rate them after service delivery. The above conditions establishes the fact that the applicant are retaining certain sort of responsibility and hold control over the Vyavshay partner and User, when they utilize the App for the supply of services.

From the above sequence of process and the conditions imposed, we are of the view that the e-commerce operator owing to their platform and technology facilitates the service provider to render their service to the consumer at the door step itself and the said service is being monitored through the App till the completion of service by getting the feedback from the supplier as well as from the recipient of service.

8.10) Further, it is pertinent to mention herein the rule of interpretation observed by the Hon'ble Supreme Court of India, in Civil Appeal No 2684 of 2007, by placing reliance on catena of Judgments, as follows:

*" in M/s. Hiralal Ratanlal vs. STO, AIR 1973 SC 1034, this Court observed: In construing a statutory provision the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision say. **If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes.** The other rules of construction are called into aid only when the legislative intent is not clear.*

..... In Gurudevdatla VKSSS Maryadit vs. State of Maharashtra AIR 2001 SC 1980, this Court observed : "It is a cardinal principle of interpretation of that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable with in the contemplation of the statute".

The same view has been taken by this Court in *S.Mehta vs. State of Maharashtra* 2001 (8) SCC 257 (vide para34) and *Patangrao Kaddam vs. Prithviraj Sajirao Yadav Deshmugh* AIR 2001 SC 1121. **The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.**” The Hon’ble Supreme Court has concluded that literal rule of interpretation will prevail over all other principles.

8.11) The Supreme Court in **Doypack Systems Pvt. Ltd. vs. UOI [1998 (2) SCC 299]** has laid down: *“It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand.”*

8.12) By applying the ratio laid down by the Hon’ble Court stated supra, the case on hand is examined with reference to the relevant provisions of the CGST Act 2017 / TNGST Act 2017, connected Notifications to ascertain the intention of the Government, as below:

Section 22(1) of the Act provides for the Persons liable for registration as follows:

Section 22(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

8.13) Section 24 of the CGST Act 2017/ TNGST Act 2017, mandates certain categories of persons to obtain compulsory registration, irrespective of the threshold limit for aggregate turnover mentioned under Section 22(1) of the Act. It shall be taken into account that sub-section (ix) of Section 24, which mandates the compulsory registration of persons who supply goods or services or both, through electronic commerce operator who is required to collect tax at source under section 52, but exempts persons supplying services specified under sub-section (5) of Section 9 from obtaining compulsory registration. The Section 24(ix) is extracted as below:

Section 24. Compulsory registration in certain cases.-

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

xxxxxxxxxxx

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of Section 9, through such electronic commerce operator who is required to collect tax at source under section 52.

8.14) In exercise of powers conferred under Section 9(5) of the Act, the Central Government, on the recommendations of the Council, by **Notification No.17/2017-Central Tax (Rate) dated 28.06.2017, as amended by subsequent notifications**, notified 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, motor cab, maxi cab, motor cycle, omnibus or any other motor vehicle;
- (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.
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, 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.
- (iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

8.15) Hence, we find that the Government relaxes the provisions of GST law for certain category of service providers with turnover less than threshold limit, from obtaining compulsory registration under Section 24(ix). Also, the Government shifts the liability to pay tax to the Electronic Commerce Operator from the Service providers, for such category of Services notified under Section 9(5) of the Central Goods and Services Tax Act, 2017.

8.16) By following the principle laid down by the Hon'ble Apex Court, to ascertain the intention of the legislature in fixing the liability on the E.Commerce Operator instead of the small service providers, it will be appropriate to mention the Statement of Object and Reason herein viz "the proposal, justification of the proposal and the recommendations of the fitment committee" before the 20th GST Council Meeting, to bring the house-keeping services such as plumbing, carpentering etc, within the beneficial sweep of Section 9(5), to facilitate and promote the small service providers, which are extracted as below, from the Official web site of the GST Council:

Sl.No.	Proposal	Justification for proposal	Recommendations of the Fitment Committee
1	Services of Plumber, Carpenter etc. may be added in the aggregator model	It shall ease compliance burden on small service providers	May be accepted. Liability to pay GST in case of accommodation service provide by small service providers such as home stays having annual turnover below Rs. 20 lakh (Rs. 10 lakh in case of special category States) providing accommodation service

			<p>through E-Commerce Operator (ECO) has been placed on the ECO, thereby saving the small service providers from the requirement of obtaining registration.</p> <p>The benefit given to small service providers providing accommodation service through E-Commerce Operator (ECO) may be extended to small house-keeping service providers (plumber/carpenters) providing services through ECO.</p>
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8.17) From the above agenda, it is to be noted that the purpose behind exempting small service providers pertaining to un-organised Sector enumerated under the Notification 17/2017 is that such service providers are not in a position to bear the burden of compliance of the provisions of the CGST Act, 2017, who neither have the means nor the resources for compliance. Whereas the E.Commerce Operator have the resources and are in a position to meet the compliance requirements of CGST Act, 2017. In view of the above discussions when the intent of the legislature is clear in the provisions of the Act itself, the import of external aid viz., dictionary meaning to interpret the Section is not warranted. Hence, we are of the view that Section 9(5) of the Act of 2017 creates a statutory obligation on the E.Commerce Operator as the deemed supplier of the services received by the consumer through the online platform facilitated by the E. Commerce Operator. Hence, the electronic commerce operator for the purpose of Section 9(5) of the Act 2017 are entities, which are liable to pay tax on the supplies made by other individual suppliers, utilizing the app maintained by the applicant, for the notified services subject to the conditions imposed, thereon.

8.18) It is not the case of the applicant that the users after browsing through the services listed on the applicant's app i.e., "Vyavshay" contact the service providers listed on the "Vyavshay" app i.e., "partners" **directly**. As per the definition of Users in the Business Model provided by the applicant it is seen that throughout the booking process, users receive detailed information about service rates and availability in their local area. Also, users can track service delivery personnel in real-time, ensuring transparency and timely service. After the service is provided, users confirm payments made to the associates, thus completing the entire transaction process. Hence we can see that though the "partners" are the actual service providers, the applicant through the app is not only involved in linking the service users / customers and the service providers / "partners" but also facilitating booking of the required services, tracking service delivery personnel in real time and confirmation of payment to the "associates".

8.19) We find that the applicant has also made submissions that in cases of electronic digital platforms such as Amazon, Flipkart, Urban clap and others, though the invoices issued for supply is by the vendor the logo of the operator is mentioned on the face of the invoice, indicating responsibility of supply. That charges such as commission, shipping fees is levied by the operators –such commission is calculated

on the value of the goods being sold by the vendor to the end customer and collection for all supplies is done by the operator and passed on to the supplier after deduction of appropriate charges and taxes. However we find that the above submissions do not come to the rescue of the applicant. In this regard we reproduce a FAQ on E commerce provided by the Central Board of Indirect taxes;

Question 21: *There are cases in which the ECO does not provide invoicing solution to the seller. In such cases, invoice is generated by the seller and received by the buyer without ECO getting to know about it. The payment flows through the ECO. In such cases, on what value is TCS to be collected? Can TCS be collected on the entire value of the transaction?*

Answer: *Section 52(1) of the CGST Act, 2017 mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects the consideration. The amount collected should be duly reported in GSTR-8 and remitted to the Government. Any such amount collected will be available to the concerned supplier as credit in his electronic cash ledger.*

From the above question and answer it can be seen that in certain models of ecommerce / instances the invoice is generated by the seller and received by the buyer without ECO getting to know about it, however even in such instances the E-commerce is liable to collect the TCS on the net taxable supplies. Hence the applicants claim that they are not generating invoices for the supplies is not a valid argument.

8.20) Further, the fact that the ecommerce operator is not receiving the amount from the service recipients is also not a valid argument since as already stated above, the e-commerce operator is deemed to have supplied the service in terms of Section 9(5) read with the notification above. It is not relevant whether the consideration is paid to the e-commerce operator or to the service provider, as unlike the provisions of Section 52(1) which mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects the consideration, the provisions of Section 9(5) of the CGST Act, 2017 / SGST Act, 2017 provide that in case of services notified under Sec. 9(5) of the CGST Act, 2017, tax shall be paid by the electronic commerce operator if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the supplier liable to pay tax in relation to the supply of such services. Section 9(5) enables the Government to shift point of levy on supply of certain services through E.Commerce Operator from supplier to E.Commerce Operator. Only few services are notified u/s 9(5) in Notn. No.17/2017 and the supply of such services alone qualify for shifting tax burden from supplier to E.Commerce Operator. In all other cases, supplier has to discharge the tax liability as per the provisions of the GST Act.

8.21) In this case, the applicant facilitates the supply flow from the supplier to the customer and the applicant takes responsibility on such supplies carried through their App and specifically excludes themselves from any responsibility if there is any off line supply takes place between the supplier and customer. The clauses 4.3 and 4.4 found in the "Terms of Use-Vyavshay User and Vyavshay partner" respectively, as discussed in para 8.9, would otherwise, show that the responsibility of the supply made through

App lies with the applicant and therefore, the applicant cannot disown their liability cast upon them u/s 9(5) for the services notified in Notn. No.17/2017. If their contention is taken as the correct legal stand, then the very basic intention of the GST Council and Parliament/ State legislature would fail, as the small service provider would again face the rigor of compliance burden under the GST law and procedures. This is not the object of the legislation and hence, taking cue from the GST Council agenda for 20th meeting held on 5th August 2017, the intention behind the notification issued u/s 9(5) is to obviate the burden of GST compliance from small service providers, the applicant is liable to pay tax u/s 9(5) of the Act on the services notified in Notification No.17/2017.

8.22) We find that it is relevant in the instant case to quote the extract of the ruling of the Hon'ble High Court of Delhi in the case of UBER INDIA SYSTEMS PVT. LTD. VS Union of India. Though the said judgement of the Division Bench of Hon'ble Delhi High Court is issued in the context of Examination of Constitutional validity of the Notifications withdrawing exemption from GST to service of transportation by auto-rickshaw and non-AC stage carriage provided through e-commerce operators (ECOs), it is not out of place to quote herein the extract of the said judgement. The question as to whether auto-rickshaw drivers/bus-operators supplying transportation of passenger service through e-commerce operators (ECOs) is on parity with individual auto-rickshaw drivers/individual bus operators was raised before the Hon'ble High Court of Delhi. The court held that taxation in hands of ECO for booking made through their platform would subserve interest of individual bus operator/auto-rickshaw drivers and does not affect adversely interests of consumer - Consumer who books auto-rickshaw ride through an ECO and consumer who uses street hailed auto-rickshaw fall under different categories as although quality of physical ride in both auto-rickshaws may be same but experience of doorstep convenience and assurance in safety makes experience different for consumers - Treating suppliers rendering services through ECOs and suppliers independently providing said services at par would amount to lack of reasonable classification, resulting in gross inequality - As ECOs and individual service providers are distinct from each other, exemption available to individual service providers cannot be said to be available to ECOs - Relationship between ECOs, consumer and vendor are on principal-to-principal basis - ECOs are not acting as agents of auto-rickshaw drivers/bus operators - Consumer while opting to avail services of ECO, is also opting for these add on services as a result of same, ECO itself becomes supplier and is not acting as an agent of supplier - As ECOs are providing bundle of services, they are an independent supplier of service and service provided by an independent supplier is only one facet of bundle of services assured by ECOs to consumer.

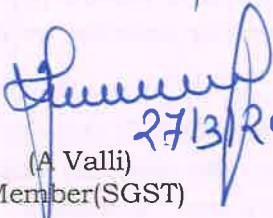
8.23) From the above ruling it can be seen that the treatment of tax is different for the same supplies when made through E Commerce Operator. We reiterate that in the instant case, the supplies are made **through** the applicant's app "Vyavshay" and the provisions of Section 9(5) of the CGST Act 2017/ TNGST Act 2017 are very much applicable to the applicant.

8.24) In view of the above discussions we find that the applicant squarely falls under the ambit of Section 9(5) of the CGST Act 2017/ TNGST Act 2017 w.r.to notification no. 17/2017 dated 28.06.2017. Hence, with regard to the segment of transaction on which the applicant is liable to pay tax we find that the applicant has to pay tax on the amount charged by the applicant towards the usage of the app as well as on the transaction value as sole consideration in terms of Section 15 of the Act, paid by the users towards receipt of supply of notified services under the **Notification No.17/2017-Central Tax (Rate) dated 28.06.2017, as amended**, as the applicant, being an ecommerce operator, is deemed to be the supplier of services as per the provisions of Section 9(5) of the CGST Act, 2017, and the applicant is liable to pay GST only on the transaction between the applicant and the partners i.e based on usage of the app with respect to supply of services other than which are notified under Section 9(5) of CGST Act, 2017.


9. In view of the above, we rule as under,

RULING

1. The applicant satisfies the definition of an e-commerce operator and falls under the nature of supply provided in Section 9(5) of CGST Act, 2017 r/w notification No 17/2017 dated 28.06.2017.
2. The Applicant is liable to pay GST on the amount charged by the applicant towards the usage of the app as well as on the transaction value as sole consideration in terms of Section 15 of the Act, paid by the users towards receipt of supply of notified services under the Notification No.17/2017-Central Tax (Rate) dated 28.06.2017, as amended, as the applicant is deemed to be the supplier of services as per the provisions of Section 9(5) of the CGST Act, 2017. However, the applicant is liable to pay GST only on the transaction between the applicant and the partners i.e based on usage of the app with respect to supply of services other than which are notified under Section 9(5) of CGST Act, 2017


(A Valli)
Member(SGST)
27/3/2024




(D Jayapriya)
Member (CGST)
27/03/2024

To

M/s Balat Enterprises Private Limited,
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//By RPAD//

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