M/s TUI India Private Limited

Authority for Advance Ruling — Delhi

ADVANCE RULING NO. 09/DAAR/2018 dated 28.06.2019 (In Application… Dated **28.06.2019**

Q Questions Before the Authority

- Whether, for 'Accommodation Only' services, GST is charged at 18% only on the Service Fee / Convenience Fee charged by the applicant, if the applicant satisfies the conditions of a pure agent in relation to hotel bookings made for its B2B and B2C clients.
- Whether a 'Tour Operator' has an option to either charge GST at 5% (with no ITC) or charge GST at 18% (with full ITC) under S. No. 23 of Notification No. 11/2017 - Central Tax (Rate).

F Facts

The applicant is an outbound tour operator that books hotel rooms abroad for Indian B2B agents and B2C tourists under a commercial agreement with DOTW, Dubai. It raises invoices showing the hotel cost and a separate service fee, charges GST at 18% on the service fee and sales commission, and says the hotel cost is passed on as is to the foreign supplier. The hotel cost is not charged to the applicant's own account.

H Ruling

Q1: GST on 'Accommodation Only' services where the applicant acts as pure agent	**GST at 18% is payable on the amount the applicant receives as its own fee; the hotel accommodation value remitted to the foreign hotel is excluded from taxable value**	**Exclusion applies only if all pure agent conditions are satisfied**; the order states the exclusion conditionally and does not conclusively find that the applicant meets each condition
Q2: Option for a tour operator to pay 5% without ITC or 18% with full ITC	**No option. Tour operator services are covered under entry (i) of S. No. 23 at 5% (2.5% CGST + 2.5% SGST) without ITC**	**The 18% with ITC route is not available** because tour operator services fall outside entries (ii) and (iii) both before and after 25.01.2018

The authority held that the applicant is an 'agent', 'supplier' and 'taxable person' under sections 2(5), 2(105) and 2(107) of the CGST Act, and is liable to register and to collect and deposit GST under section 9(1). The value of hotel accommodation remitted to the foreign hotel can be excluded from the taxable value only if all pure agent conditions are satisfied. A tour operator cannot opt for 18% with full ITC because tour operator services fall only under entry (i) of S. No. 23, which carries the 5% rate without ITC.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The authority found that the applicant books hotel rooms on specific client instructions and so acts as an agent under section 2(5), making it a supplier under section 2(105) and a taxable person under section 2(107), with a compulsory registration duty under section 24(vii). Under section 12(3) read with its proviso in the IGST Act, the place of supply is India, so GST is payable under section 9(1). On the pure agent question, it relied on Rule 33 of the CGST Rules and the CBEC clarification, and left the exclusion of hotel cost to satisfaction of the conditions. On the tour operator question, it read entries (ii) and (iii) of S. No. 23 as not covering tour operator services, so the 5% rate without ITC applies.

P Provisions Relied On

- Section 2(5), Section 2(105), Section 2(107) of the CGST Act, 2017
- Section 7 of the CGST Act, 2017
- Section 9(1) and 9(3)/(4) of the CGST Act, 2017
- Section 15 of the CGST Act, 2017
- Section 22 (Explanation (i)) and Section 24(vii) of the CGST Act, 2017
- Section 12(1), 12(2), 12(3) and proviso of the IGST Act, 2017
- Rule 33 of the CGST Rules, 2017 (value of supply in case of pure agent)
- Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017, S. No. 23, Explanation (iv)
- Notification No. 1/2018 - Central Tax (Rate) dated 25.01.2018 amending S. No. 23
- CBEC clarification on the pure agent concept in GST

! For the Practitioner

The order is useful for intermediary hotel-booking businesses that want to report only their fee as taxable. It confirms that such a business is an agent, supplier and taxable person, and that pure agent exclusion is available only if every condition is met on the facts. It also confirms that tour operators cannot opt for 18% with ITC under S. No. 23. The order does not decide whether this applicant in fact meets the pure agent conditions, and it does not address the position for any other fact pattern.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> 9 daar 2018 tui 1.pdf

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