

# Tax Flash News

20 April 2023

## Passenger transportation services availed through an e-commerce operator are exigible to GST

Services of transportation of passengers by metered cabs or auto rickshaws and transportation of passengers by stage carriage other than air-conditioned stage carriage are exempted from payment of Goods and Services Tax (GST) since its inception. However, with effect from 1 January 2022, this exemption is withdrawn if these services are booked through an e-commerce operator (ECO). The Delhi High Court held<sup>1</sup> that the notifications withdrawing the exemption are not ultra-vires the Constitution of India. Therefore, consumers are liable to pay GST on the fare amount in cases where bookings are made through the electronic platform of an ECO for an auto rickshaw ride or a bus ride.

### Facts of the case

- Services of transportation of passengers by metered cabs or auto rickshaws and transportation of passengers by stage carriage other than air-conditioned stage carriage are exempted from payment of GST vide Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017.
- This notification was amended vide Notification No. 16/2021-Central Tax (Rate) dated 18 November 2021 to withdraw exemption to the impugned services if these are supplied through an ECO and notified under Section 9(5) of CGST Act, 2017. Consequently, with effect from 1 January 2022, the 'fare' has become exigible to tax with respect to a booking made by a consumer through the electronic platform of an ECO for an auto rickshaw ride or a bus ride.

### Petitioners' contentions

- Impugned notifications arbitrarily create a classification between the ECOs and the individual service providers solely based on the 'mode of booking' availed by the consumer for availing the passenger transportation service. Accordingly, it discriminates against the ECOs by denying them the benefit of exemption available to the individual service providers.
- There is a differential treatment between auto rickshaw drivers providing services through ECO and street-hailing auto rickshaw drivers, thereby violating Article 14 of the Constitution of India.
- The underlying nature of service remains the same irrespective of whether the passenger transportation services are facilitated through ECOs or are availed directly through street-hailing auto rickshaws.
- Convenience availed by the consumer for using the mobile application of Petitioners is separately charged as a 'convenience fee', which is already exigible to GST.
- The benefit of exemption from the levy of GST on passenger transportation services by a non-air-conditioned stage carriage has been denied when such services/supplies are availed through ECOs, even though such supplies continue to be exempted when booking is made by consumers directly through bus operators (offline/online) or offline agents.
- Notifications are against the public interest, thereby violating Article 19(1)(g) and 21 of the Constitution of India (i.e., Notifications are ultra-vires Section 11 of the CGST Act).

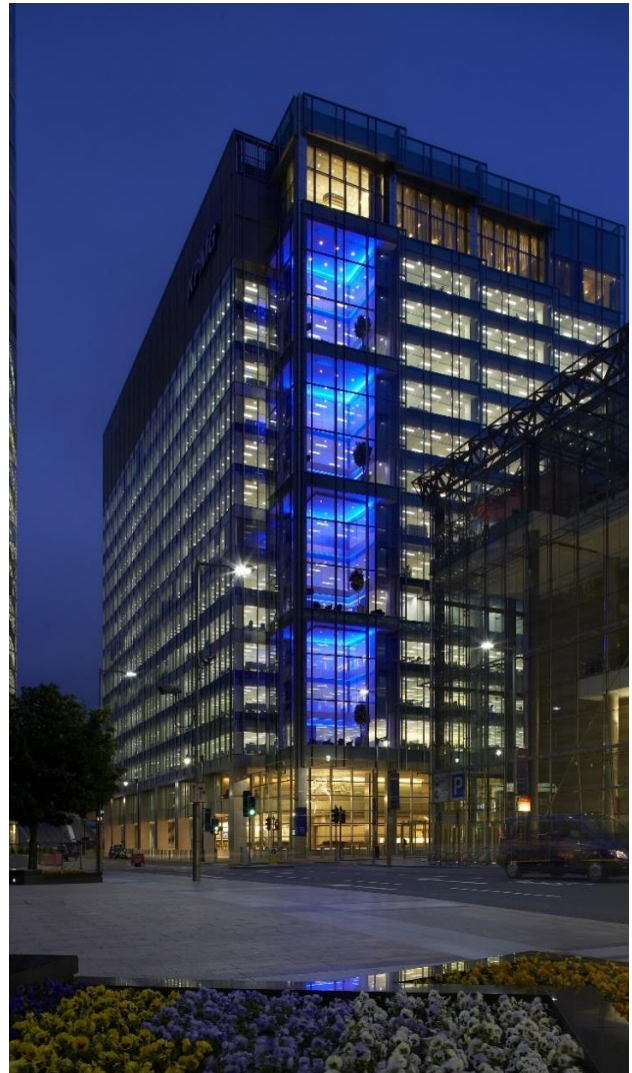
<sup>1</sup> Uber India Systems Private Limited v. Union of India & Anr. [2023-VIL-228-DEL]

## Revenue's contentions

- There is no equality in taxation. Differentiation is not always discrimination.
- ECOs owing to their platform and technology, provide ease of convenience and value-added services to the consumer and therefore, the classification is valid.
- ECOs disrupt the level playing field for individual auto rickshaw drivers providing service through street hailing. The impugned notifications bridge the gap between the unorganised auto rickshaw drivers and organised ECOs.
- Different rates on different goods or services or on different types or categories or sub-categories of goods or services are common under the GST law.
- The question of impacting the livelihood of auto drivers providing their services otherwise and not through ECOs does not arise since the levy of GST is pass-through in nature and would be borne by the consumers.
- Section 9(5) of the GST Act is not the charging section. The tax is levied upon all services under Section 9(1) unless they are exempt under Section 11(1) of the GST Act. Withdrawal of exemption on impugned services results in the levy of GST under Section 9(1).
- Petitioners do not have a locus to file the batch of writ petitions.

## High Court's decision

The Delhi High Court dismissed the batch of writ petitions. It upheld the contentions of the Revenue and concluded that the impugned notifications are not violative of Articles 14 (i.e., equality before law), Article 19(1)(g) (i.e., right to practice any profession or carry on any business) and Article 21 (i.e., protection of life and personal liberty) of the Constitution as these notifications do not create an unreasonable classification based on the 'mode of booking' availed by the consumers. Further, the Union of India is empowered to issue the impugned notifications under Section 9(5) and Section 11 of the GST Act.



# KPMG in India addresses:

## Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House, Corporate Road,  
Prahlad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

## Bengaluru

Embassy Golf Links Business Park,  
Pebble Beach, 'B' Block,  
1st & 2nd Floor,  
Off Intermediate Ring Road, Bengaluru – 560071  
Tel: +91 80 6833 5000

## Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

## Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

## Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

## Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2, Serilingampally  
Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

## Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

## Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytila, Kochi – 682 019.  
Tel: +91 484 302 5600

## Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

## Mumbai

2nd Floor, Block T2 (B Wing),  
Lodha Excelus, Apollo Mills Compound, N M  
Joshi Marg, Mahalaxmi, Mumbai- 400011  
Tel: +91 22 3989 6000

## Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

## Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

## Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

## Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000

**30 years**  
and beyond

<https://kpmg.com/in/en/home/social>

[kpmg.com/in/en/home/social](https://kpmg.com/in/en/home/social)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2023 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.