



## **Uber challenges arbitrariness in Notification taxing auto-rickshaw operations through e-commerce platform from Jan 1**

Delhi HC issues Notice in writ filed by Uber challenging Notification No. 16/2021 and Notification No. 17/2021 dated November 18, 2021, wherein facilitation of passenger transportation services through an e-commerce platform by way of auto-rickshaws had been made taxable from January 1, 2022; As regards claim of interim-relief of Petitioner for stay of implementation of Impugned Notifications, as it will have deleterious impact on business operations, lists the matter on December 21, 2021; Notes that the Petitioner operates a software-based application 'Uber' through which it facilitates the supply of passenger transportation services, one mode is by way of auto-rickshaws, which was exempted under serial number 17(e) of Notification No. 12/2017 dated June 28, 2017; Petitioner claims that impact of impugned Notifications is such that if a customer avails an auto-rickshaw ride from a street hailing auto then, there is no GST liability on the fare that is collected, however, if the same customer books an auto-rickshaw through Uber App then, there will be a GST liability on the fare; Terming the Notifications as arbitrary, Petitioner states that it failed to appreciate the fact that the mode of transportation remains the same irrespective of the medium of booking it; Strenuously arguing that the Notifications are against public interest, Petitioner submits that Section 11 of CGST Act provides that an exemption notification can be issued in public interest only, thus, as a corollary, if any form of supply is to be brought within the tax net, the same should also be in public interest; However, Petitioner mentions that the Impugned Notifications would adversely impact its business operations which might also lead to the cessation of services of the auto drivers listed on its platform and would also have an impact on the livelihood of the auto drivers who are listed on the Uber App; Petitioner asserts that there are no other instances where supply of any kind of service is taxed merely on account of the fact that said supply is facilitated through an e-commerce platform and therefore, the impugned Notifications are violative of doctrine of level playing field.

Petitioner operates a software-based application 'Uber' through which it facilitates the supply of passenger transportation services. One mode of passenger transportation services which the Petitioner facilitates is by way of auto-rickshaws, such services, were exempted under serial number 17(e) of Notification No. 12/2017 – Central Tax (Rate) dated June 28, 2017.

However, vide Notification No. 16/2021 – Central Tax (Rate) and Notification No. 17/2021 – Central Tax (Rate) dated November 18, 2021, facilitation of passenger transportation services through an e-commerce platform by way of auto-rickshaws had been made taxable.

The impact of the Impugned Notifications is that if a customer avails an auto-rickshaw ride from a street hailing auto then, there is no GST liability on the fare that is collected. However, if the same customer books an auto-rickshaw through the Uber App then, there will be a GST liability on the fare which is collected. Hence, the Impugned Notifications in a way seeks to treat the same mode of service in a different manner.



Petitioner claimed that the impugned notifications, to the extent they seek to levy GST on passenger transportation services through auto rickshaws mediated through an 'electronic commerce operator' like the Petitioner, fails to satisfy the test of reasonable classification under Article 14 of the Constitution of India.

Petitioner termed the Notifications to be arbitrary since they failed to appreciate the fact that the mode of transportation remains the same irrespective of the medium of booking it.

Further, Petitioner strenuously argued that the Notifications were against public interest, Section 11 of CGST Act provides that an exemption notification can be issued in public interest only, thus, as a corollary, if any form of supply is to be brought within the tax net, the same should also be in public interest.

However, the Impugned Notifications would adversely impact the business operations of the Petitioner which might also lead to the cessation of services of the auto drivers listed on its platform and would also have an impact on the livelihood of the auto drivers who are listed on the Uber App.

Petitioner submitted that increase in price and ultimately cessation of this business segment would reverse the progress towards welfare of auto drivers achieved through e-commerce platforms like that of the Petitioner.

Furthermore, Petitioner contended that increase in price and ultimately cessation of this business segment will reduce freedom of choice and even access for disadvantaged customers like the disabled, handicapped and senior citizens who are benefitted with access to affordable public transport like autos at their doorstep, when facilitated by e-commerce platforms.

Petitioner asserted that there were no other instances where supply of any kind of service was taxed merely on account of the fact that the said supply was facilitated through an e-commerce platform and therefore, the impugned Notifications were violative of doctrine of level playing field.

Petitioner prayed for an interim relief in the nature of the stay of the implementation of the Impugned Notifications, as the deleterious impact which the Impugned Notifications will have on the business operations have been presented before the Court.

In view of the aforesaid submissions of the Petitioner, HC issued Notice in the matter and posted for further hearing on the point of interim relief to December 21, 2021.