

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Smt. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Shri. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AACCC9272HIZG
Legal Name of Applicant	Chowgule Industries Private Limited
Registered Address/ Address provided while obtaining user id	S.No. 47/2A/2. CTS NO:3800, Taware Colony Off Pune Satara Road Pune 411009, Maharashtra.
Details of application	GST-ARA, Application No. 18 Dated 17.05.2019
Concerned officer	Division - II, Swargate, Commissionerate Pune II.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Retail Business
B Description (in brief)	The Applicant is an authorized dealer for Maruti Suzuki India Limited for supply of motor vehicles and spares and for servicing as also for some other commercial vehicle manufacturers.
Issue/s on which advance ruling required	(iv) admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as 'the CGST Act and MGST Act'] by **M/s. Chowgule Industries Private Limited**, the applicant, seeking an advance ruling in respect of the following question.

Whether the applicant is entitled to avail Input tax credit charged on inward supply of Motor Vehicle which are used for Demonstration purpose in the course of business of supply of Motor Vehicle as input tax credit on capital goods and whether the same can be utilised for payment of output tax payable under this Act.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a reference is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions of the applicant is as under:-

2.1 “M/s. Chowgule Industries Private Limited (hereinafter referred to as the Applicant) is a Private Limited Company, is registered under Central Goods and Service Tax Act, 2017 in the State of Maharashtra vide GSTIN 27AACCC927211ZG and also in other State. The Applicant is an authorized dealer for Maruti Suzuki India Limited for supply of motor vehicles and spares and for servicing as also for some other commercial vehicle manufacturers.

The Applicant has made purchases of motor vehicles against tax invoice which are reflecting in the books of accounts of the Applicant as capital goods. The vehicles are used as demo cars for providing trial run to customers to understand the features of the vehicle. This is an essential part of marketing and sales promotion to facilitate supply of cars.

As per the dealership norms with Maruti Suzuki India Limited, the applicant is required to maintain at least one Demo vehicle of each model per location. The Applicant purchases these Demo vehicles against tax invoice. The said Demo vehicles are capital goods accounted under Fixed Assets of the Company excluding GST component. The applicant has not claimed depreciation on the tax component of the said demo cars nor claimed as business expenditure u/s. 37 of the Income Tax Act.

Every model of demo cars are used for demonstration for a limited period. They are generally replaced every two years or 40,000 Kms whichever is earlier. Secondly, the vehicle models keep on changing due to competition in the market and changing demands of the customers. The customers always demands for brand new model of cars for test Drive. Hence, it become mandatory for the Applicant to buy new Demo vehicle on launch of new model of vehicle. The Demo vehicles are sold after paying the applicable taxes on sale value at that point of time.

According to Section 16(1) of the GST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of his business.

As per Section 2 (19), “capital goods' means goods. The value of which is capitalized in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course of furtherance of business. The Demonstration vehicles purchased from supplier are being capitalized. The demo cars are used in the course or furtherance of business and entitled for input tax credit u/s. 16(1) of the GST Act.

As per Section 17 (5) (a) the input tax credit shall not be available on motor vehicles except when they are used for making further supply of such motor vehicles. The further supply of such demo motor vehicle are made after one or two years and constitutes a taxable supply and

GST is paid thereon. GST Act does not prescribe the time within which further supply is to be effected. Hence, the impugned tax credit is available.

The Goa Authority for Advance Ruling has already ruled in favour in their own case in State of Goa in AAR No GOA/GAAR/07 of 2018-19/4796 dated 26/3/2019, copy of the same is enclosed herewith as Annexure 1.

Reliance is placed on Goa authority and the Kerala Authority in Advance Ruling AAR No GOA/GAAR/07 of 2018-19/4796 dated 26/3/2019 and No. KER/10/2018 dated 26/09/2018 (AAR - Kerala), where in it held that "Input tax paid by a vehicle dealer on the purchase of motor car used for demonstration purpose of the customer can be availed as input tax credit on capital goods and set off against output tax payable under GST."

The Goa authority and the Kerala Authority for Advance Ruling has observed that the suppliers of vehicles supplied demo cars against tax invoices. The demo car is an indispensable tool for promotion of sales by providing trial run to customers and to understand the features of the vehicle. The capital goods which are used in the course or furtherance of business, is entitled for input tax credit. As the impugned purchase of demo car is in furtherance of business, the Applicant is eligible for input tax credit. Furthermore, this activity does not come under the negative clause, as after a limited period of use as demo car, the vehicles are sold at the written down book value.

This same principle is applicable to the Applicant also. Therefore, input tax credit on the motor vehicle purchased for demonstration purpose can be availed as credit on capital goods and the same can be set off against output tax payable".

2.2 The applicant made further submissions on 02.11.2019, which are reproduced as under:

"The Applicant is regularly collecting & paying GST in respect of sales & servicing income & also availing GST ITC. Applicant further submits that they have filed periodical returns in GSTR-1 and GSTR-3B during the period for which advance ruling is sought.

As per the Sales Policy Bulletin: SPB No. 635 dated 15/09/2010 with the Maruti Suzuki India Ltd., the Applicant is required to maintain at least one Demo vehicle of each model per location. Applicant purchases these Demo vehicles against tax invoice. The said Demo vehicles are capital goods accounted under Fixed Assets of the Company excluding GST component. The GST component of the said demo cars is not utilised for claiming depreciation nor claimed as business expenditure u/s. 37 of the Income Tax Act.

These vehicles are exclusively used as demo vehicles and the outside body it is marked as demo vehicles and used only for the trials and demos which helps in marketing the products, so each brand of vehicle will have at least one demo vehicle.

The vehicles are used by the Applicant for demonstration to/Test Drive by the customers who are interested in buying vehicles. The Demo vehicles are also used as means of promotion of sales by providing trial run to customers to understand the features of the vehicle & make their decision accordingly. It is a dealership requirement that every dealer shall compulsorily buy from its principal dealer & possess with them for trial run for satisfaction of its customers. This is an essential part of marketing and sales promotion to facilitate sale of cars.

Every model of demo cars are used for demonstration for a limited period. They are generally replaced every two years or 40,000 Kms whichever is earlier. Secondly, the vehicle models keep on changing due to competition in the market & changing demands of customers. The customers always demand for brand new model of cars for test Drive. Hence, it become mandatory for the Applicant to buy new Demo vehicle on launch of new model of vehicle. The Demo vehicles are sold after paying the applicable taxes on sale value at that point of time.

3. Counter of the department filed by Asstt. Commr., Divn II (Swargate), Pune-II CGST Commissionerate, vide letter F.No. CGST/P-II/D-II/R-I/Chowgule/Advance Ruling/19-20/4165 dated 04.10.2019 and received in the office of this authority on 23.10.2019 is as under:-

“The assessee has filed an application with Maharashtra Advance Ruling Authority for the point that, whether input tax credit on motor vehicle purchased for demonstration purpose can be availed as credit on capital goods and the same can be set off against output tax payable.

In this regard it is to mention that, as per Section 16(1) of the GST Act -

“Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him.....”

And as per Section 2(19), Capital Goods are defined –

“capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;”

In view of the above provisions, the assessee has submitted in their application that -
The assessee purchases motor vehicles against tax invoice which are reflecting in the books of accounts of the assessee as capital good. The vehicles are used as demo cars for providing trial run to customers to understand the features of the vehicle. This is an essential part of marketing and sales promotion to facilitate supply of cars. These demo cars are capital goods accounted under fixed assets of the company excluding GST component. The assessee does not claim depreciation on the tax component of the said demo cars nor claim business expenditure under Section 37 of the Income Tax Act. These demo cars are generally replaced every two years or 40000 kilometers and

then sold after paying the applicable **taxes on sale** value at that point of time. Thus it appears that these demo vehicles **are used in the course of** furtherance of business.

Further assessee submitted that as per Section 17(5) -

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely: (a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely:

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

The input tax credit shall not be available on motor vehicles except when **they are used** for making supply of such motor vehicles. Further supply of such demo motor vehicles are made after one or two years and constitutes a taxable supply and GST is paid thereon.

In view of the legal provisions and as discussed **above, it seems that, these demo** vehicles are used in the course of furtherance of **business and are capital goods accounted** under fixed assets of the company, hence, the assessee is eligible for input credit.

However, assessee has submitted that, they have applied the similar issue with the Goa Advance Ruling Authority vide AAR No. GOA/GAAR/07 of 2018-19/4796 dated 26.03.2019 and it is held that

"The input tax credit on the Motor Vehicle purchased for demonstration purpose can be availed as Input Tax Credit on Capital Goods and set off against output tax payable under GST."

HEARING

Preliminary hearing in the matter was held on 05.11.2019. Sh. Kishor Bandekar, Advocate, appeared and requested for admission of their application. Jurisdictional Officer, Ms. J. L. Parekar, Supdt., Range -I, Division -2,CGST, Pune-II, also appeared and made submissions.

The application was admitted and called for final hearing on 20.11.2019. Sh. Kishor Bandekar, Advocate, appeared and made their submissions. Jurisdictional Officer, Ms. J. L. Parekar, Supdt., Range -I, Division -2,CGST, Pune-II, also appeared.

5. OBSERVATIONS

Heard both the parties.

5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

5.2 The Applicant, an authorized dealer for Maruti Suzuki India Limited and also for some other commercial vehicle manufacturers, for supply of motor vehicles and spares, and for servicing has, as per the dealership norms with Maruti Suzuki India Limited, made purchases of motor vehicles, to be used as Demo Vehicles for providing trial run to customers, against tax invoice which are reflecting in their books of accounts, as capital goods and reflected under Fixed Assets of the Company excluding GST component. They have not claimed depreciation on the tax component of the said demo cars nor claimed as business expenditure u/s. 37 of the Income Tax Act. These Demo vehicles are sold, after a certain period of time, after paying the applicable taxes on sale value at that point of time.

5.3 From the submissions made by the applicant we observe that they are dealers of Maruti Suzuki India Limited, a company which is a manufacturer of motor vehicles. As a dealer in this line of business it is of utmost necessity to have vehicles for providing trial run to customers to understand the features of the vehicle. These vehicles, known as Demo Vehicles are an important and essential requirement for marketing and promoting the sale of motor vehicles. Thus we find that these Demo Vehicles are being used to further their business i.e. sale of motor vehicles and further, the purchases of such Demo Vehicles are capitalized in their books of accounts.

5.4 To answer their question whether they are entitled to avail Input tax credit (ITC) charged on inward supply of such Demo Motor Vehicle, as ITC on capital goods and whether the same can be utilized for payment of output tax payable under this Act, we refer to the provisions of Chapter V of the CGST Act, 2017 comprising of Sections 16 to 21.

5.5 Section 16 of the CGST Act, 2017, contains provisions with respect to eligibility and conditions for taking ITC. As per Section 16 (1), every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him

which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. The section does not make any distinction between capital goods and other goods for allowing credit of ITC. Hence, ITC in respect of capital goods, is available and can be taken, since ITC credit for capital goods is in parity with other goods. However, the credit is available subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49 of the CGST Act.

5.6 We observe that the Demo Vehicles are capital goods for the applicant and will be capitalized and accounted under Fixed Assets of the Company excluding GST component. They orally submitted that they have /will not claim depreciation on the tax component of the said demo cars nor will claim such expenses incurred as business expenditure u/s. 37 of the Income Tax Act. Further, vide letter dated 13.12.2019, the applicant has submitted that, they are



accounting for fixed assets, excluding GST which is accounted as input credit separately. They have also stated that the depreciation is claimed only on the cost of the car and not on GST.

5.7 As per Section 2(19) of the CGST Act, 2017, “capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

We have no doubt, as per the submissions made, that the Demo cars in the subject case fulfill the definition of capital goods, are received under a Tax Invoice and are used or intended to be used in the course or furtherance of business i.e. sale of motor vehicles. Hence in view of the discussions made above we find that the applicant is eligible to avail ITC on capital goods

5.8 While we find that the applicant is eligible to take ITC under the provisions of the CGST Act, it is to be seen whether Section 17 (5) of the said Act debars the applicant from taking credit. Section 17 of CGST Act, 2017, as reproduced under, explains Apportionment of credit and blocked credits :

Section 17 (5): Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

A reading of Section 17 (5) indicates that ITC shall be available in respect of motor vehicles which are further supplied as such.

5.9 In the subject case, the applicant has submitted that every model of demo cars is used by them for demonstration only for a limited period i.e. every two years or 40,000 Kms whichever is earlier (the documents submitted by the applicant on 14.11.2019 reveal that the two year period as being the minimum period is not followed by them. Their Demo Vehicles are sold after two years also) and thereafter, the said vehicles are sold after paying the applicable taxes on sale value at that point of time. Since the applicant will be making further supplies of the Demo vehicles, and there is no time limit prescribed in the GST Act for making such further supplies, we are of the opinion that they will be eligible to avail ITC in the subject case.

5.10 The applicant has also queried whether the ITC availed by them on capital goods can be utilized for payment of output tax payable under this Act.

The manner of utilization of ITC is provided as per provisions of Section 49 of the CGST Act. Section 18 of the CGST Act deals with availability of credit in special circumstances. As per Section 18(6) of the CGST Act, when there is a supply of capital goods on which ITC has been taken, as in the subject case then the applicant shall pay an amount equal to the ITC taken on the said Demo Vehicles reduced by such percentage points as may be prescribed or the tax on the transaction value of such Demo Vehicles, whichever is higher.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

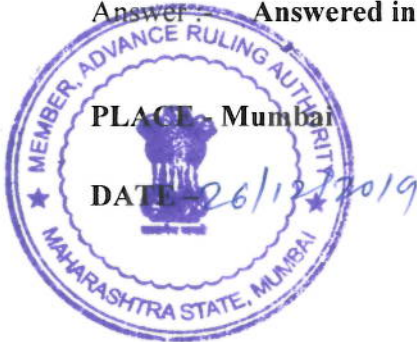
(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 18/2019-20/B- 121 Mumbai, dt. 26/12/2019

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1):- Whether the applicant is entitled to avail Input tax credit charged on inward supply of Motor Vehicle which are used for Demonstration purpose in the course of business of supply of Motor Vehicle as input tax credit on capital goods and whether the same can be utilised for payment of output tax payable under this Act.

Answer: Answered in the affirmative.




—sd—
P. VINITHA SEKHAR
(MEMBER)

—sd—
A. A. CHAHURE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.