

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH
Goods and Service Tax
O/o THE COMMISSIONER, COMMERCIAL TAX,
MOTI BUNGALOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007
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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Shri Manoj Kumar Choubey
Joint Commissioner
Office of the Commissioner of Commercial Tax, Indore Division-1
2. Shri Virendra Kumar Jain
Joint Commissioner
Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AAUFGK1834E1ZE
Name and address of the applicant	M/S Khatwani Sales And Services LLP 1121/2, PANDITBHAWANI PRASAD TIWARI COLONY ward no. 32 JABALPUR Madhya Pradesh(482001)
Point on which advance ruling sought	d. Admissibility of input tax credit of tax paid or deemed to have been paid;
Present on behalf of applicant	Shree DEEPAK ASRANI, C.A.
Case Number	...02/2020
Order dated	23.7.2020
Order Number	13/2020

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. M/s Khatwani Sales And Services LLP(hereinafter referred to as the Applicant) are authorised dealer of KIA for sales & services of vehicles in Jabalpur. at 1121/2, PANDIT BHAWANI PRASAD TIWARI COLONY ward no. 32 Jabalpur Madhya Pradesh (482001). The Applicant is having a GST registration with GSTIN 23AAUFGK1834E1ZE.



2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE –

- 3.1 The application has been filed u/s 97 of MP GST Act 2017 and CGST Act 2017 (hereinafter referred to as the SGST Act and CGST Act) by the M/s Khatwani Sales and Services LLP.
- 3.2 We Khatwani Sales and Services LLP GST No. 23AAUFG1834E1ZE are authorised dealer of KIA for sales & services of vehicles.
- 3.3 We are filing GST Advance ruling seeking “Whether Input tax credit on the Motor vehicle purchased for demo purpose can be availed”.
- 3.4 Applicant purchases, the vehicles from the supplier against tax invoices after paying tax and capitalizes the demo vehicles in the books of accounts.
- 3.5 We are of the view that in accordance with the submission, The demo vehicles which are used in the course or furtherance of business, may therefore, be entitled for Input Tax Credit (ITC).

4. QUESTION RAISED BEFORE THE AUTHORITY –

- 4.1 Whether Input tax credit on the Demo vehicle purchased can be availed as the same will be capitalized in books.

5. DEPARTMENT VIEW POINT – The Joint Commissioner(Tech), CGST & Central Excise Hqrs. Jabalpur vide letter F.No.IV(16)02/Misc.Corres/ Hq/JBP/Tech/ 2020-21/1562 dated 09.07.2020 submitted the view that the input tax credit on the motor vehicle purchased for demo purpose can not be availed as the same is hit by barring provisions of clause (a) of sub-section (5) of Section 15 of the CGST Act, 2017.

6. RECORD OF PERSONAL HEARING - Due to Pandemic of COVID-19 virtual hearing was conducted on request of Shree Deepak Asrani, CA on behalf of the Applicant. At the time of hearing he reiterated the arguments attached with the application.

- 6.1 The applicant submitted that Section 16(1) of the CGST Act, 2017 clearly states that “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”.
- 6.2 It was also argued that the provisions of Section 2(19) of the CGST Act, 2017 are as follows - “Capital goods” means goods, the value of which is capitalized 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”.
- 6.3 Applicant also quoted Section 17(5)(a) of the CGST Act, 2017 and argued that Input tax credit will not be available in respect of motor vehicles and other conveyances except,-
- (i) When such motor vehicles or other conveyances are supplied further, or
- (ii) Used for transportation of passengers or



(iii) Giving training on driving, flying, navigating such vehicles or conveyances or are used for transportation of goods.

6.4 According to the Applicant considering the above definition in his situation :-

The Demo vehicles are used for furtherance of business and are used for imparting training about the features of the car and training on driving such vehicles to the prospective buyer & same would be used for test drive of the similar vehicle model which will generate taxable revenue & helps in furtherance of business. As sole condition for determining the eligibility of ITC on demo cars is based on Section 17(5) of CGST Act 2017. ITC should be allowed as it satisfies the criteria mentioned in section 17(5)(a)(i) as demo vehicles is used for furtherance of supply of business by increasing the sales of similar vehicles. Section 17(5)(a)(iii) As demo vehicles are used for imparting training about the features of the car, training on driving such vehicles to the prospective buyer and used for test drive after which sales can be generated easily. As when sold in future will be sold at reduced price, also same will generate revenue by helping us to increase the sale of other similar units which will increase tax revenue.

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 the course or furtherance of business, applicant should be eligible for input tax credit.

6.5 The Applicant in support of his argument said that - recently few advance rulings were pronounced which endorses the view that ITC is allowed on capital goods being demo cars :-

1. A. M. Motors (2018) (AAR, Kerala)
2. Chowgule Industries (P.) Ltd. (2019) (AAR, Goa)
3. Chowgule Industries Private Limited (GST AAR Maharashtra)

6.6 The Applicant also gave following declaration - "

- a) That we have purchased the vehicle against tax invoice which are reflecting in books of accounts as capital assets under head Demo Cars
- b) These Demo Vehicles are used for providing Trial Run to customers to understand the features of vehicle amid essential part of marketing & sales promotion to facilitate supply of cars.
- c) Every model of cars are used for demonstration for a limited period that usually replaced every two years or 40000 kms or upto continuation of model, whichever is earlier.
- d) The activity does not come under the negative clause, as after the limited period of use of demo car, the vehicle are sold at WDV.
- e) That the manner of utilization of ITC is provided as per the provisions of Section 49 of the CGST Act. Section 18 of the CGST Acts deals with availability of credit in special circumstances. As per Section 18(6) of the CGST Act, when there is 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 vehicle reduced by such percentage points as may be prescribed or the tax on the transaction value of such Demo vehicle, whichever is higher.
- f) That our firm will not claim depreciation on tax component on the Capitalized Assets.
- g) That our firm will pay the taxes as applicable at the time of sale".

7. DISCUSSIONS AND FINDINGS –

7.1 We have carefully considered the submissions made by the applicant.



- 7.2 The Applicant is an authorized dealer of KIA for sales & services of their motor vehicles. Applicant purchases demo vehicles from the supplier against tax invoices after paying tax, and capitalizes the said demo vehicles in his books of accounts.

According to the Applicant, Demo Vehicles are used for furtherance of business and are used for imparting training about the features of the vehicle and training on driving such vehicles to the prospective buyer, and the same are used for test drive of the similar vehicle model which will generate taxable revenue and help the applicant in furtherance of their business.

The Applicant submitted that every model of the car is used for demonstration for a limited period and is usually replaced every two years or 40000 kms or up to continuation of model, whichever is earlier.

It is also submitted that the vehicles used for demo purpose are sold in subsequent year at WDV. The Applicant also submitted that they will abide with the provisions of Section 18(6) of GST Act at the time of sale of the Demo Vehicle.

The Applicant declared that they will not claim depreciation on tax component of the capitalized Demo Vehicles.

- 7.3 From the submissions made by the applicant, we observe that the Applicant has relied upon the provisions of Sec. 17(5)(a) which were in fact applicable prior to Amendment Act, 2018.

Now w.e.f. 1.2.19 the provisions of Sec. 17(5) reads as under :

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

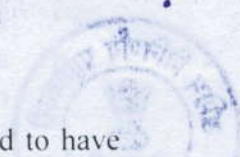
(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles”

We do appreciate that as a dealer in motor vehicle, the applicant is required to have demo vehicles for providing trial run to customers and to enable them to understand the features of the vehicle. Thus, the Demo Vehicles are essential for promoting the sale of motor vehicles. But, that is not relevant for deciding eligibility of Input tax credit on Demo vehicles.



22



The provisions of Sec. 17(5) are exception to Sec. 16. This is very clear from the initial para of Sec. 17(5) which says – “Notwithstanding anything contained in sub-section (1) of Sec. 16.....”.

Therefore, for deciding the eligibility of Input tax credit on Demo Vehicles, the provisions of Section 17(5)(a) of GST Act, 2017 are relevant which debars the applicant from taking Input tax credit, except in the situations described in Clause (A), (B) and (C).

A reading of Section 17(5)(a) indicates that Input tax credit shall be available in respect of motor vehicles which are further supplied as such, or which are used for transportation of passengers, or which are used for imparting training on driving of such vehicles.

By subsequent sale of Demo Vehicle after one or two year, it can not be said that the Demo Vehicle is for further supply. The sale in the subsequent year of Demo vehicle on which depreciation has been charged is to be treated as a sale of used / second-hand vehicle, and not sale of a new vehicle.

We find that the Demo vehicles used for Demo and trial to the customers are not covered in the exception Clause (A), *i.e.* for further supply of such vehicle; or in Clause (B) *i.e.* for transportation of passengers; or in Clause (C) *i.e.* for imparting training for driving.

Hence though the Demo vehicles are for furtherance of business of the applicant, even then they are not eligible for Input tax credit in view of provisions of Section 17(5)(a) of GST Act.

7.4 The Applicant has submitted that the firm will not claim depreciation on the tax component of Demo Vehicles which are capitalized in the books of accounts. We find that not charging depreciation on the tax component, is as per other relevant provisions of the GST Act. But, that can not affect the applicability of provisions of Section 17(5)(a) of GST Act according to which the applicant is not eligible for Input tax credit on Demo Vehicles, as the same are not covered by any of the exceptions given clause (A), (B) or (C) of Sec. 17(5)(a).

We also find that the eligibility for inputs tax credit on Demo Vehicles can not be decided on the basis of their capitalisation, or payment of GST at the time of their sale in the subsequent year.

7.5 Thus, we find that there is clear provision in law for admissibility of Input tax credit on motor vehicles in any of the three conditions prescribed in clause (A), (B) and (C) of Section 17(5)(a) of GST Act. As the applicant's Demo vehicles do not comply any of the said conditions, therefore, the applicant is not eligible for Input tax credit on





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Demo vehicles in view of provisions of Section 17(5)(a) of GST Act in spite of the fact that the Demo Vehicles are used by the applicant for furtherance of their business.

8. RULING

- 8.1 Considering the Arguments and submissions made by the Applicant in respect of the Question raised before this authority, it is ruled that the Applicant is not eligible for Input Tax Credit on Demo vehicles purchased for furtherance of business, in view of barring provisions of clause (a) of sub-section (5) of Section 17 of GST Act, 2017, as they are not covered by any of the exceptions given in clause (A), (B) or (C) of Sec. 17(5)(a).
- 8.2 The ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.


(Manoj Kumar Choubey)
(Member)


(Virendra Kumar Jain)
(Member)

Copy to:- NO. 02/2020/AAR/R-28/27

सत्यप्रतिलिपि
INDORE, dated 28/07/2020

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

