



## HARYANA AUTHORITY FOR ADVANCE RULING,

GOODS AND SERVICES TAX,

HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)ADVANCE RULING NO.HAR/HAAR/R/2018-19/40  
(In Application No.: 40/2018-19, dated 04.12.2018)

Name & Address of the Applicant	:	M/s Platinum Motocorp LLP, Plot No. 282, Sector-06, Industrial Estate IMT Manesar, Gurugram.
GSTIN of the Applicant	:	06AASFP2852P1ZG
Date of Application	:	04.12.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(d)- admissibility of Input Tax Credit of tax paid or deemed to have been paid
Date of Personal Hearing	:	01.03.2019
Present for the Applicant	:	Sh. Manoj Kumar Goyal (C.A.) and Sh. Dinesh Morya (C.A.)

Memo No. 800  
Dated 09/11/19**Facts in Brief:**

1. The applicant is a registered taxpayer and is an authorized dealer of Maruti Suzuki India Limited. Alongwith the purchase of vehicles for the purpose of further supply, the applicant purchases demo cars for demonstration purpose. As per the applicant, the purchase of demo cars is an indispensable business practice and Goods and Services Tax is paid on the purchase of these demo cars. Each demo car is used for demonstration for a maximum period of 2 years from the date of purchase after which it can be sold as the second hand car. The applicant maintains that the GST is paid on taxable value as per section 18(6) of CGST Act, 2017.

**Issue for Ruling:**

- 2.1 Whether Input Tax Credit (ITC) can be availed on such capital goods (demo cars) and set off against output tax payable under GST.
- 2.2 Whether Input Tax Credit (ITC) can be availed on the ancillary input services such as insurance and repair and maintenance availed in respect of the demo cars.

**Discussion:**

- 3.1 The contention of the applicant is that as per section 16(1) of the CGST Act, 2017, every registered person shall 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. Further, Section 2(19) of the said Act reads "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. He has also submitted that the demo car is indispensable tool for promotion of sales by offering trial run to customers and to understand the features of the vehicle. The purchase of demo cars is capitalized in the book of accounts and as per the GST Act, the capital goods which are used in the course of furtherance of the business, are eligible for availing ITC and utilizing the same while discharging the output tax liability. The applicant holds that Section 17(5) of CGST Act is not intended to be applied on demo cars.

3.2 Section 16(1) of the CGST Act reads: *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.*

3.3 Section 17(5)(a) reads as under: *Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 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:—*

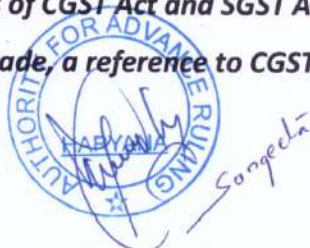
*(A) further supply of such motor vehicles; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving such motor vehicles;*

**(As stands amended w.e.f 01.02.2019, Notification No. 2/2019- Central tax dated 29th January, 2019)**

**Note: The provisions of CGST Act and SGST Act are identical and unless a special reference is made, a reference to CGST Act shall also mean a reference to SGST Act.**





**Finding:**

- 4.1 The applicant has been heard at length, the documents tendered have been perused and the legal provisions have been read thread-bare.
- 4.2 Section 16(1) relates to entitlement with respect to credit of input tax charged on any supply of goods and services or both to the recipient which are used or intended to be used in course or furtherance of his business. It means that the recipient is entitled to credit of input tax charged on supply of **inputs** as well as **capital goods** to him.
- 4.3 Whereas Section 17(5)(a) provides that Input Tax Credit shall not be available in respect of 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 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;*
- 4.4 A plain reading of the provisions contained in these sections suggests that the provisions of Section 17(5)(a) of the Act are not only over-riding provisions with respect to Section 16(1) and Section 18(1), but are also exhaustive in nature and limits the scope of Input tax credit with respect to motor vehicles.
- 4.5 The use of the words "*Notwithstanding anything contained in sub-section (1) of section 16*" emphasizes that the Input Tax Credit can be availed on motor vehicles only if the conditions prescribed under Section 17(5)(a) are satisfied. So, even if, the demo vehicles are capitalized in the book of accounts and are used or intended to be used in the course or furtherance of business, the Input Tax Credit with respect to these vehicles cannot be availed by the recipient.
- 4.6 The applicant has further contented that the demo vehicles are eventually sold to buyers in open market and GST is charged on such supply. A close scrutiny of Section 17(5)(a) reveals that the term supply has been prefixed by the word "further" and due weightage should be given to the prefix. In



essence the term further supply connotes "resale" which is not the purpose of the applicant behind purchasing demo cars.

- 4.7 As far as the issue of availing of Input Tax Credit on the ancillary input services such as insurance and repair & maintenance in respect of above mentioned vehicles is concerned, a glance at Section 17(5)(ab) is necessary which reads:

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, Input Tax Credit shall not be available in respect of:

*" services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause(aa):*

*Provided that the input tax credit in respect of such services shall be available—*

*(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*

*(ii) where received by a taxable person engaged—*

*(I) In the manufacture of such motor vehicles, vessels or aircraft; or*

*(II) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him."*

- 4.8 The demo vehicles are not used for the purposes specified under Section 17(5)(a) i.e. for making taxable supplies, including further supply of such motor vehicles and are, therefore, not covered under exception provided under section 17(5)(ab)(i).

- 4.9 These demo vehicles are also not covered under exceptions mentioned under section 17(5)(ab)(ii).

**So, in light of the above discussion, the Ruling of the Authority on the questions raised in the application is as under:**

- 5.1 The Goods and Services Tax paid on the purchase of demo vehicles cannot be availed as Input Tax Credit and set off against output tax payable under the GST.



*Sangeeta*

- 5.2 No Input Tax Credit can be availed on the ancillary input services such as insurance and repair & maintenance in respect of above mentioned vehicles.
6. As far as the admissibility of Input tax credit prior to coming into effect of Notification No. 2/2019- Central tax dated 29th January, 2019, the Advance ruling Authority is of the view that the same was inadmissible with respect to purchase of Demo vehicles as well as ancillary input services in light of the provisions contained in Section 17(5)(a) and Section 17(2) respectively.

Ordered accordingly.  
To be communicated.

01.03.2019  
Panchkula.

*Sangeeta*  
(Sangeeta Karmakar)  
Member CGST

*Madhubala*  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

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Copy to:

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2. Principal Commissioner of Central Goods & Service Tax, GST Bhavan, Plot No. 36-37, Sector-32, Gurugram (Haryana).
3. Deputy Excise and Taxation Commissioner (ST), Gurugram (West).