

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING IN
GOODS AND SERVICES TAX, IN THE STATE OF HARYANA,
PANCHKULA**

Appeal Case No.: HAR/AAAR/2019-20/02 Dated: 28.06.2021

| | |
|---|--|
| GSTIN of the Applicant | 06AABCB7140CIZ9 |
| Name | M/s BMW India Pvt. Ltd., |
| Address/Registered Address provided while obtaining user ID | M/s BMW India Pvt. Ltd., 2 th Floor, Oberoi Centre, Building No. 11, DLF Cyber City, NH-8, Gurugram-122002, Haryana. |
| Present for the Applicant | Sh. Murlidharan, Advocate, through VC. |

**Order under Section 101 of Central Goods and Services Tax Act,
2017 / Haryana Good and Services Tax Act, 2017**

The present appeal has been filed under Section 100 (1) of Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act/ HGST Act, respectively) by M/s. BMW India Pvt. Ltd. (hereinafter referred to as the "Appellant") against the Advance Ruling No. HAR/HAAR/R/2018-19/17 dated 09.10.2018.

A copy of order dated 09.10.2018 of the Advance Ruling Authority was received by the appellant on 04.09.2019 and the appeal has been filed on 01.10.2019 which is within time.

BRIEF FACTS OF THE CASE:

The Facts of the case, as available from 'Facts and Issues of Ruling' in the Appeal submitted vide FORM 'GST ARA-02' by the Applicant M/s BMW India Pvt. Ltd. Gurugram, which is registered in GST at Gurugram as a State administered taxpayer for running a training centre for the training of Engineers and Marketing professionals etc. They get BMW branded vehicles made in Chennai plant as inter-state stock transfer on which IGST and Compensation Cess have been paid, and use these vehicles for '*a very limited period of about 12 months*', as under:

'Training fleet' : Vehicles for training of Dealers and Authorized Service Centre operators;

'Press fleet' : Vehicles provided to media houses/ senior journalists for test purpose;

'Marketing fleet' : Vehicles for undertaking various marketing and promotional activities such as road shows, exhibitions etc.

'Sales fleet' : Vehicles assigned to corporate sales team for giving it to customers for test drive and product experience;

'Visitor cars' : Vehicles used in Gurugram to service visitor transportation needs and business use of employees;

'Personally Assigned Vehicles' : Vehicles assigned to employees and Expats of the company for business purpose.

The Applicant has specifically mentioned in Para 11 of the Statement of Facts that they are not seeking a relief in respect of last 2 categories of Vehicles viz. 'Visitor cars' and 'Personally Assigned Vehicles'.

After the said uses, the Appellant sells these vehicles to Company's authorized dealers, as old and used vehicles, after the said limited period use. That, such vehicles are capitalized in the book of accounts due to applicable accounting standards.

That these vehicles are eventually supplied as old and used vehicles in terms of Notification No.08/2018-C.T. (Rate) dated 25.01.2018 and GST is paid on such supply at concessional rate as applicable on the old and used Motor Vehicles under the Notification. The exemption viz. the reduced rate of 18% (instead of normal 28%) is admissible if the ITC is not availed.

Presently the Taxpayer is not availing ITC on the vehicles used by Visitors and Employees.

QUESTION on which Advance Ruling was requested by the Appellant:

"Whether the Applicant unit is entitled to avail Input Tax Credit (ITC) of IGST and Compensation Cess paid on receipt of cars (on stock transfer basis) for use in relation to specified business activities and thereafter onwards supply to dealers after use by the Applicant unit for a limited period of time?"

RULING by Advance Ruling Authority (AAR):

The Advance Ruling Authority (AAR) gave following Rulings on the above mentioned Question:

"RULING:

In the backdrop of Discussion and Findings in the foregoing Paras, the Applicant is not entitled to avail input tax credit on motor vehicles put to use as per their submissions made in Para 5 above."

In the Discussion & Findings portion of the Order, the Advance Ruling Authority had found/ noted the following: -

"There is no doubt that in the Motor Vehicle Industry, demonstration vehicle is an indispensable tool for promotion of sales by providing trial runs to the customers. These demo cars are used for demonstration purpose for the prospective customers and after a specific period of time, these are sold off for the book value, paying the applicable taxes at that point of time."

During the discussion it has been shown to the authority that these demo cars are received by the applicant against tax invoices and are reflected in their books as capital assets. The general provisions for availing input tax credit on capital goods which are used or intended to be used in the course or furtherance of business are contained in Section 16(1) and Section 18(1) of the CGST/ HGST Act 2017 read with relevant Rule 43 of the CGST/ HGST Rules.

It is also worth noting that the specific provisions regarding admissibility of Input Tax Credit on Motor Vehicles for transportation of persons up to a seating capacity of not more than 13 persons are contained in Section 17(5) of the CGST/ HGST Act 2017.

Since Section 17(5) of the HGST/ CGST Act 2017 starts with a non-obstante clause, as per the law the admissibility of Input Tax Credit on motor vehicles in the present case shall be as per the provisions contained therein."

GROUND'S of APPEAL:

In their support, the applicant submitted the following as GROUND'S OF APPEAL:

- The Ruling is not in sync with the Rulings passed by other Advance Ruling Authorities that input tax credit would be admissible;
- The AAR has not considered the submissions;
- The Ruling is vague/cryptic;
- They are entitled to take Input Tax Credit (ITC) as the vehicles were further used for specified taxable supply mentioned under Section 17(5)(a)(i)(A);
- That, vehicles were always intended to be further supply by the Appellant after specified use;
- That, no time limit has been prescribed under CGST Act for further supply of vehicles;
- That, learned authority had failed to adhere to the provisions of Section 98(6) of the CGST Act.

RECORDS OF PERSONAL HEARING:

The personal hearing in the case was conducted on 24.03.2021. Sh. Murlidharan, Advocate appeared through Video Conference before the Members of the Appellate Authority for Advance Ruling and emphasized on the submissions already made in the Appeal and no new point was added.

DISCUSSIONS AND FINDINGS:

As per the Statement of Facts submitted as a part of the Appeal, the Goods in question are BMW branded Motor Vehicles.

The Applicant mentions in Para 11 of the Statement of Facts, *"in view of provision of Section 17(5)(g) of the CGST Act 2017, the Applicant is not seeking any relief for categories of vehicles mentioned in aforesaid Para 8(v) and 8(vi)".* These categories are 'Personally Assigned Vehicles' and 'Visitor cars'.

From the above, and from the Question for which Advance Ruling was applied for and the present appeal has been filed, the issue for determination presently is admissibility of Input Tax Credit (ITC) on the Appellants' motor vehicles which they sell after limited period use to BMW's Dealers.

ITC is admissible generally on all the goods which fall under the definition of Inputs. Inputs have been defined under the CGST Act 2017 in Section 2(59) as,

"input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business".

The Capital Goods have been defined under the Act in Section 2(19) as,

"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".

The Appellant has submitted that they are capitalizing the Motor Vehicles subjected to the mentioned usage. Thus, apparently ITC should be admissible on these vehicles, as 'capital goods'.

Section 16 of CGST act provides that a recipient Taxpayer is entitled to take the ITC if it has in possession, the duly issued invoices and the goods or services have been received and are intended for furtherance of business.

Further the restrictions under Section 17 for availment of ITC on certain goods and services. One such purpose is as expressly mentioned under Section 17(5)(g) viz., *"(g) goods or services or both used for personal consumption."* It can be inferred that sub-Section 17(5)(g) restricts ITC on the Motor Vehicles as these are potential items of personal/non-business use.

However, to arrive at the actual legislative intent i.e. whether the exclusion of said motor vehicles is absolute or purely purpose based, the relevant sub-Section may be read: -

"17(5) 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 may be seen, a plain reading of this sub-Section indicates the legislative intent clearly that when used other than the intended purposes, the ITC cannot be allowed on the Motor Vehicles of seating capacity up to 13 persons. The intended purposes are also limited i.e. numbered only three, viz.:

- **further supply of such motor vehicles; or**
- transportation of passengers; or
- imparting training on driving such motor vehicles.

As mentioned supra, the BMW Vehicles in respect of which the Question about admissibility of ITC has been raised for Advance Ruling, have been used for the following purposes:

'Training fleet' : Vehicles for training of Dealers and Authorized Service Centre operators;

'Press fleet' : Vehicles provided to media houses/ senior journalists for test purpose;

'Marketing fleet' : Vehicles for undertaking various marketing and promotional activities such as road shows, exhibitions etc.

'Sales fleet' : Vehicles assigned to corporate sales team for giving it to customers for test drive and product experience;

We find that none of the uses to which the BMW Vehicles are put to, fits into the uses which find mention in sub-Section 17(5). The vehicles under question are not meant for "*further supply* of such motor vehicles' i.e. '*further supply as such*", but are first put to the mentioned uses. These are disposed of after prolonged use, which may even not restrict to 12 months as mentioned by the Appellant.

If the argument of the party is allowed then in that case all the motor vehicles, irrespective of the nature of Supply will be eligible for ITC across the industries. It will no longer be a restricted clause for Car Dealers, but will be an open-clause for all the trade and industry to avail the ITC on all the Vehicles purchased by them. This has never been the intent of the Parliament.


As regards to the Applicant's contention that these vehicle are sold after 12 months ITC may be allowed as Input, we observe that in the very first demonstration run demo car loses the character of the new motor vehicle and demo vehicles is sold akin to second hand goods and which

is different from new Vehicle and accordingly treated differently under GST law, so the demo car is not an input.

So it appears that the BMW Vehicles received by the Appellant under stock transfer have never been received with the intent to simply '*further supply* of such motor vehicles/'sell as such'. Input Tax Credit on these vehicles, thus, cannot be allowed.

On the same rationale, the input credit of the Services of repair/ insurance/ maintenance used in respect of said vehicles with seating capacity up to 13 passengers, cannot be allowed.

We rule accordingly.



(**Shekhar Vidyarthi**)
Member (SGST)



(**Suresh Kishnani**)
Member (CGST)

Regd. AD/ Speed Post

M/s. BMW India Pvt. Ltd.,
2th Floor, Oberoi Centre, Building No. 11,
DLF Cyber City, NH-8, Gurugram-122002,
Haryana.

Copy to:

1. The Commissioner of Central Goods & Services Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Assistant Commissioner, CGST, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
3. Deputy Excise and Taxation Commissioner(ST), Gurugram(East).