

**THE GOA APPELLATE AUTHORITY FOR ADVANCE RULING FOR
GOODS AND SERVICES TAX**

Office of the Commissioner of Commercial Taxes, Goa Rajya Kar Bhawan, Old IPHB

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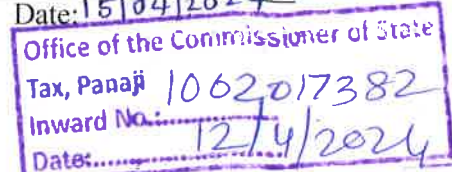
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(constituted under Section 99 of the Goa Goods and Services Tax Act, 2017)

ORDER NO. GOA/GAAAR/01 of 2023-24 / 187

Date: 15/04/2024



BEFORE THE BENCH OF

Shri. Sarpreet Singh Gill, Commissioner of State Tax, Goa.

Shri. Mayank Kumar, Chief Commissioner Central Tax and Customs, Pune
Zone.

Name of the Applicant	Sai Service Private Limited
Address	36/1, Porvorim North Goa
GSTIN	30AABCS4998M1ZW
Date of Application	11/05/2023
Under Section 97(2) of the CGST/IGST Act, 2017 under which question raised	Whether the applicant is entitled to avail the Input Tax Credit charged on inward supply of motor vehicles which are used for demonstration purpose in the course of business of supply of motor vehicle as input tax credit on capital goods.
Date of Hearing	12/02/2024
Persons Present for Hearing	Mr. Sanjay Wale, CEO, Goa Branch M/s Sai Service Pvt. Ltd., CA Nitin Vijaivergia, PW & Co. LLP, CA T.Y. Thok, Mr. N.D. Bhandary, Senior General Manager

PROCEEDINGS

(Under Section 101 of the Goa Goods and Services Tax, Act 2017/ Central
Goods and Services Tax, 2017)

The present appeal has been filed under section 100 of the Goa Goods



and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017 (hereinafter referred to as the 'SGST Act' and 'CGST Act') by the Appellant M/s **Sai Service Private Limited, 36/1, Alto Porvorim Goa**, challenging the decision dated 30/12/2022 of the Goa AAR on their application filed u/s 97 of GST law seeking an Advance Ruling in respect of the following questions:

- Admit the application for advance ruling and hold that the Order issued by the AAR is invalid and void
- Provide any other clarifications (if required) in context of the factual background provided vide EXHIBIT-I;
- Allow the Appellant to reiterate all the submissions made vide EXHIBIT-II without prejudice to one another;
- Grant the Appellant with an opportunity of personal hearing to put forth our contentions and explain our submissions before passing any Ruling in this regard;
- Allow the Appellant to amend, alter and add to the submissions made in the present Application;
- Allow the Appellant to produce additional documents and other material during the personal hearing; and
- Pass such other Orders and directions as may be deemed proper and necessary in this regard

BRIEF FACTS

Applicants Background:

Sai Service Private Limited, 36/1, Alto Porvorim Goa hold GSTIN 30AABCS4998M1ZW. The Appellant is engaged in the business of sale of automobiles having a dealership of Maruti Suzuki India

Limited, Bajaj Auto Limited & KTM and Chetak Technology Limited. The Company is also involved in providing servicing, repair, and related auxiliary service with respect to motor vehicles. The appellant vide his application dated 30/12/2022 had sought clarification on following point:

Whether the applicant is entitled to avail the 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.

The AAR disposed the application for advance ruling vide order number GOA/GAAR/04 of 2022-23/73 dated 30/12/2022 ruling that ITC on demo car shall not be eligible for availment.

Aggrieved by the order the appellant filed a rectification application bearing No. ZD300523000350F dated 11/05/2023 for rectification of order before the AAR. Simultaneously an application for appeal bearing no. AD300523000258Q dated 11/05/2023 was filed before this authority.

The rectification application filed before the AAR was disposed vide order no. ZD3010230014858 dated 30/10/2023.

It is only after the disposal of rectification application the appeal of the taxpayer is taken on record and heard.

PRAYER OF THE APPELLANT

The appellant primarily makes the prayer that the application for appellate advance ruling be admitted and to hold the Order issued by the AAR invalid and void. It is further requested to provide any other clarification (if required) in context of the factual background provided vide EXHIBIT-I attached to application. It also requested to pass such other Orders and directions as may be deemed proper

and necessary in this case.

INTERPRETATION OF LAW AND/OR FACTS BY APPELLANT

1. THE AUTHORITY FOR ADVANCE RULING HAS ERRED IN HOLDING THAT THE APPELLANT IS NOT ENTITLED FOR ITC DESPITE FULFILMENT OF ALL CONDITION FOR ELIGIBILITY.

- i. The Appellant submits that the Authority for Advance Ruling has erred in concluding that the Appellant is not entitled to avail the ITC charged on inward supply of motor vehicles which are used for demonstration purpose in the course of business.
- ii. The Appellant respectfully submits that the Appellant is entitled to avail the Input Tax Credit charged on inward supply of motor vehicle being used for demonstration purpose in the course of business of supply of motor vehicle as input tax credit on capital goods, under Section 16 of the CGST Act, the Appellant seeks to rely upon the following legal interpretation of the CGST Act.
- iii. Inward supply of motor vehicles used for demonstration purpose by the Appellant is in the course or furtherance of business.
- iv. The Appellant puts credence upon the interpretation of the above legal provision and submits that as per Section 16(1) of the CGST Act, the Appellant who purchases these demo cars for use in test drives for customers and with an intention of further sale within limited period shall be eligible to avail credit of input tax charged, as these are used in the course or furtherance of his business.

- v. Interpretation of the expression “used” or “intended to be used” in the course or furtherance of his business
- vi. The Appellant at the cost of repetition submits that primarily the demo car is being purchased in order to provide test drive facility to the customers which is essentially the demonstration facility used for making the customers understand the look and features of the vehicle and for providing trial drives to the customers which becomes an instrumental factor in the decision-making process of the customer during the procurement of vehicles. Such a facility is vital to promote sale of such vehicles of the Appellant.
- vii. Demonstration of Vehicles is inherent to business of the Appellant
- viii. Further it is important to note that demo activity is important pre-requisite in Auto Industry wherein even if not all but most of the consumers take the test drive in order to determine whether they would like to make purchase of the vehicle or not. Hence, this is an inherent activity or an element that cannot be dissected or disassociated from the activity of supply of such vehicles.

2. THE AUTHORITY FOR ADVANCE RULING ERRED IN CONCLUDING THAT SALE OF DEMO CAR DOES NOT FALL UNDER EXCEPTION CLAUSE OF SECTION 17(5) (A) OF CGST ACT.

- i. The Appellant submits that the Hon’ble Authority for Advance Ruling in the Impugned Order has observed that the subsequent sale of demo car after one/two year on

which depreciation is charged cannot not be termed as 'further supply'. The Authority for Advance Ruling has thus, erred in concluding that the ITC on procurement of such motor vehicle is restricted under Section 17(5) (a) of the CGST Act.

- ii. The Appellant puts credence upon the interpretation of the above legal provision and submits that as per Section 17(5)(a) of the CGST Act, ITC is not eligible in respect of the motor vehicles for transportation of persons (having seating capacity of less than or equal to 13 persons, including the driver) whereas in the present case the demo cars are not used for transportation of persons but are used for providing demo to prospective customers which further assists them in the decision making process.
- iii. Input tax credit is permissible when used for making "further supply of such vehicles"
- iv. The Appellant further states that assuming without admitting that such demo cars are used for transportation of persons, they still get covered under the exception as carved out in Section 17(5)(a) which provides that ITC shall be available in case there is further supply of such motor vehicles. As stated supra the Appellant purchases these demo cars and further sells such demo cars after prescribed period as agreed with MSIL. Accordingly, it can be said that such ITC is eligible as the Appellant is involved in further supply of such motor vehicles after they have been used as demo vehicles for the specified time.
- v. The Appellant places its reliance upon the below interpretation of the specified exception.

- vi. Firstly, the intention of the law, as it appears from the expression, 'for further supply of such vehicles' is to allow input tax credit in respect of taxpayers dealing with motor vehicles as they are engaged in further supply of such motor vehicles. The expression, "such" bears a wide connotation which does not put any restriction in respect of supply of demo vehicles.
- vii. When the Appellant purchases demo vehicles, such purchases are also meant for further supply, the Appellant capitalizes the demo vehicles and has to keep such vehicle for a specific period of time. Such activities, in any manner, do not change the purpose of further supply.
- viii. As the demo vehicles are sold after a certain period, they fulfil the criteria of 'further supply of such motor vehicles', hence, the ITC on the same is not restricted under Section 17(5)(a) of the CGST Act.
- ix. In this regard, the Appellant would like to draw attention to the Advance Ruling pronounced by the West Bengal Authority for Advance Ruling in the case of M/s. Toplink Motorcar Private Limited, West Bengal AAR, (03/WBAAR/2022- 23), 2022 (7) TMI 181, wherein the authorities vide ruling dated 30-June-2020, held that, "the applicant is eligible to avail input tax credit on purchase of demo vehicles which can be set off against output tax payable under GST."
- x. The standard business practice of a car dealer is to purchase vehicles including one or more demo vehicles for further supply of such vehicles. While non-demo vehicles are made available for sale immediately after the purchase,

the demo vehicles are put up for sale after the demonstration/test drive period. The demo vehicles are purchased all along for further supply with the condition that they will be kept for a specific period of time. In view of the foregoing submissions, it is stated that purchase of demo vehicles and further supply of the same satisfies the condition laid down in section 17(5) (a)(A) of the GST Act.”

- xi. Secondly, the expression, ‘further supply of such motor vehicles’ does not prescribe the time limit under which such supply shall be made. The same is nowhere defined under the provisions of GST law. Further, the GST provisions nowhere specify that ITC shall not be available in respect of any outward supplies which are made at a price lower than its procurement value. The restriction imposed under section 17(5)(a)(A) of the CGST Act shouldn't be applied on the ground that the supplies have been made after a certain period of time since there is no time limit prescribed in the GST law in this regard for making such further supplies.
- xii. Similar views have also been taken in the following cases:
 - a) M/s Chowgule Industries Private Limited, Maharashtra AAR, TS-1239-AAR2019-NT b) M/s A M Motors, Kerala AAR, (KER/10/2018), TS-542-AAR-2018-NT c) M/s Titania Products Private Limited, JHR/AAR/2020-21/01/07.
- xiii. In light of the above rulings, it is aptly clear that there is no time limit prescribed in the CGST Act for making such further supplies of motor vehicles, hence the Authority for

advance ruling has erred in observing that subsequent sale of motor vehicle after ½ years cannot be considered as further supply and accordingly, does not fall under exclusion clause of section 17(5) (a) of CGST Act.

- xiv. The Authority for advance ruling has also erred in observing that once goods are capitalized in books of accounts of the Appellant, it can be considered as goods are being used for furtherance of business and not for further supply.
- xv. It is submitted that the Authority for Advance Ruling has created an arbitrary distinction between capital goods and stock in trade. The Appellant would like to highlight that Section 7 of the CGST Act does not prescribe that the goods should be recorded as stock in trade for it to be supplied further. Further, no such condition has been prescribed under Section 9 either which prescribes the provision for levy and collection. It merely specifies that tax is to be levied on output supply.
- xvi. The Appellant submits that the Authority for Advance Ruling has erred in arbitrarily creating a distinction between stock in trade and capital goods which is not specifically provided for in the law. In this regard, it is most humbly stated that the Authority for Advance Ruling cannot envisage anything which is not there in the law i.e. words cannot be added to the law arbitrarily.
- xvii. The Appellant further submits that in the present case, the Appellant sells the demo vehicles after using the same for demonstration purpose i.e. for business purposes. As there is no explicit provision that defines the time limit to make

further supplies, the said vehicles gets covered in the exclusion provided in Section 17(5)(a)(A) of the CGST Act, and therefore, the ITC on the same is eligible.

xviii. From the said observation, it appears that the Authority for Advance Ruling seems to be of the view that car sold without use is to be classified as sale of car, however if the same is sold after use, it is treated as second hand goods. The Authority for Advance Ruling, by the said observation has questioned the classification of second hand/used goods.

xix. The Appellant in this regard submits that even if car or any other goods for that matter are sold after use, the same should be treated as sale of those particular goods and not as sale of second hand goods. It is further submitted that if any alternate interpretation is taken, it will render Section 18(6) of the CGST Act and the provision that the second hand goods should be taxed at the same rate as new goods would be rendered otiose.

3. THE AUTHORITY FOR ADVANCE RULING HAS ERRED IN OBSERVING THAT THE EXPRESSION “MOTOR VEHICLES FOR TRANSPORTATION OF PERSONS” CANNOT BE INTERPRETATED BY USER OF PRODUCT.

- i. Without prejudice to the above submissions, the Appellant would further like to submit that the terms “for transportation of passengers” under Section 17(5)(a) provides that ITC 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 such vehicles 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.

- ii. From the above, it can be understood that denial of ITC of Motor vehicles is only with respect to 'for transportation of passengers having seating capacity of not more than 13 passengers'. Whereas the impugned motor vehicle (Demo car) is not being used for transportation of passengers but is in fact being used for test drive in order to ensure further sale of Motor vehicles.
- iii. However, the Authority for Advance Ruling has observed that the expression "motor vehicle for transportation of persons" should be construed as "motor vehicle intended for transporting passengers." Furthermore, ascertaining the use or purpose for which goods are employed cannot be solely determined by the end-user, but rather should be inferred from the manufacturer's descriptions or the customary understanding in which it is generally utilized.
- iv. In this regard, the Appellant would like to state that in case a motor vehicle for transportation of goods is actually used for transport of goods, can the ITC for the same be allowed because though the motor vehicle was classified as motor vehicle for transport of persons, the same was actually used for transport of goods.
- v. Basis the foregoing discussions, it is noteworthy to note that the credit for motor vehicle used for purpose for transportation of persons has only been restricted. Further,

credit for motor vehicle used for other purposes is eligible. It is further submitted that purpose of uses should be decided by the end user rather than description provided by manufacturer.

- vi. Basis the above submissions, it is submitted that ITC should not be eligible only on the transaction/activities as provided in the Section 17(5) (a) of the CGST Act i.e. transportation of goods. It is further submitted that the intention of Appellant is to procure such motor vehicle for demonstration purposes (not for transportation of persons) which is not specifically restricted under the law. Hence ITC on the use of demo cars should be eligible.

4. THE AUTHORITY FOR ADVANCE RULING HAS ERRED BY NOT CONSIDERING FAVORABLE RULING WITH SIMILAR FACTS PASSED BY THE SAME AUTHORITY IN THE ORDER

- i. The Appellant respectfully submits that the Authority for advance ruling has failed to consider the submissions advanced by Appellant in its application for advance ruling vide Para 3.12 of Exhibit-III wherein the Appellant has relied on Advance Ruling pronounced by the Goa Authority for Advance Ruling in the case of M/s Chowgule Industries Private Limited, 2019 (7) TMI 844 dated 29 March 2019, wherein the authorities held in favour of the applicant 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. It is further stated that the said order has attained finality as the tax authorities have not

preferred an appeal against the same before the Appellate Authority for Advance Ruling.

- ii. In this regard, the Appellant wishes to draw attention to the similarity in the fact pattern between the applications submitted by M/s Chowgule Industries Private Limited and that submitted by the Appellant. In both the cases, demo vehicles were procured by the companies from the supplier on payment of taxes, and subsequently capitalized as fixed assets in their respective books of accounts. These demo vehicles are indispensable tools for promotion of sale as they are used for providing test drives to the customers.
- iii. The Goa Authority for Advance Ruling has issued contradictory rulings on similar fact patterns without considering the binding precedent that applies to AAR rulings. The AAR has disregarded the principle that its rulings are binding in subsequent cases that involve the same question of law or fact.
- iv. It is imperative for legal discipline to remove uncertainty around taxpayers, and for this reason, the AAR is bound by its earlier ruling unless there is a change in law or facts, and it cannot overrule its earlier ruling without even considering the submission.
- v. Furthermore, it is important to note that there have been no changes in the CGST Act 2017 with respect to the referred sections, such as Section 2(19), Section 16(1), Section 17(5), and Section 18(6), from the time of the earlier ruling mentioned in the case of M/s Chowgule Industries Private Limited until the passing of impugned order in the present case.

- vi. The Appellant in this regards places reliance on the judgement of the **Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. Vs. Union of India [(2006) 3 SCC 1], Genpact India Pvt Ltd Vs. Union of India [CWP 10302 of 2020], Stallion Rubbers Ltd vs. Commissioner of C. EX. & S.T., Jaipur-I [2018 (8) G.S.T.L. 151 (Raj.)]**
- vii. The Appellant submits that as highlighted in Para 4.2 above, the facts in the case of the Appellant and those in the case of M/s Chowgule Industries Private Limited are identical, the Authority for Advance Ruling is ought to be bound by the principles of res-judicata also considering the fact that no appeal has been preferred by the department against the Ruling delivered in the case of M/s Chowgule Industries Private Limited.

PERSONAL HEARING

The Authorised representatives of the unit namely Mr. Sanjay Wale, CEO, Goa Branch M/s Sai Service Pvt. Ltd., CA Nitin Vijaivergia, PW & Co. LLP, CA T.Y. Thok, Mr. N.D. Bhandary, Senior General Manager attended the personal hearing held on 12/02/2024. The authorised representative reiterated their averments in the application submitted:

1. The Authorised representative reiterated the contentions already submitted along with the application.
2. Further, the authorised representative/Appellant M/s. Sai Service Pvt. Ltd., reiterated that their case/ similar case is not pending in any proceedings in the applicant's case under any of the provision of the Act

and have not already decided in any proceedings in the applicant's case under any of the provision of the Act.

3. During the course of hearing, the authorised representatives have brought forth the following arguments:
 - a. That they are in the business of selling cars and they are under an obligation from the manufacture to purchase cars for demonstration to the customers.
 - b. That they are under obligation to hold these cars for a minimum period (2) years or till the time the car runs for a minimum of 40000KM without making further sale of the same and that the further sale in contravention of these conditions will attract severe penalty from their sellers. Therefore, the cars are categorized as an asset and capitalized as per the Accounting Standards of India.
 - c. That hence they capitalized their purchase. That the clause (a) of sub section (5) of section (17) of the CGST Act, 2017 does not rule out the exception to the general provisions therein on the ground that the purchases are capitalized. They brought to the notice of AAAR that the vehicles purchased by persons who intend to use for transport of passengers or to impart training in driving such motor vehicles also capitalized purchase of such vehicles.
 - d. That they may dispose the demo vehicles by way of sale after completing the period obligated under the contract and also pay tax on such supplies.
 - e. That they are not claiming depreciation on the input tax component of the assets.
 - f. The applicant also clarified that the motor car for demo purpose are supplied to it by the OEM at a discounted rate. Similar discounts are also provided on older models of any motor car and thus it is normal trade practise.

FINDINGS AND DISCUSSIONS

The question before the Goa Advance Ruling Authority was that whether the applicant is entitled for ITC charged on inward supply of motor vehicles which are used for demonstration purpose in the course of business of further supply of motor vehicles as input tax credit on capital goods.

The Goa AAR in its ruling dated 30/12/2022 ruled that the applicant is not entitled to avail ITC charged on motor vehicle used for demonstration purpose.

The AAR authority in its findings has based its opinion on following grounds:

1. The AAR accepts that demo car is used in the furtherance of the business. As the said vehicle is capitalised in the books of Accounts.
2. The AAR disagrees with the interpretation of section 17(5) tendered by the applicant. The AAR points out that the exception provided under 17(5) (a) (A) pertains to “further supply of such motor vehicles” and is not applicable to demonstration vehicles. The AAR reasons that the said exception allows ITC in respect of motor vehicles used for making further supply of such vehicles.
3. The AAR finds that the applicant sales the demo car after one or two years on which depreciation is charged, and is sold for a lower price than it was procured.
4. The AAR concludes that the demo car capitalised in the books of the applicant is used in the furtherance of business (to be used in the business) and not for the further supply.
5. The applicant having aggrieved by the ruling provided by the AAR has filed an appeal application dated 11/05/2023 before this authority requesting to hold the order issued by the AAR as invalid and void.

This appellate authority has heard the arguments advanced by the

appellant. Also necessary explanations were taken on records from the office records. The primary arguments of the appellate are as follows:

1. The appellate fulfils all the conditions laid down in the section 16 of GST law. The appellate affixes relevant part of the section 16(1) “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”. The appellate stresses on the fact that demo car is inerrant to its business and therefore should be considered as used in the course of business.
2. The appellate argues that the sale of demo car doesn’t fall under clause (a) of section 17(5) of the GST law. The appellate claims that the AAR has erred in its ruling in the impugned order by observing that the subsequent sale of the demo car after 1/2 years on which depreciation is charged cannot be termed as “further supply”.

The appellate argues that input tax credit is permissible when used for making “further supply of such vehicles” the appellate argues that the intention of the law is to allow ITC in respect of taxpayers dealing in motor vehicles. It is further argued that the expression “further supply of such motor vehicles” doesn’t prescribe the time limit under which such supply shall be made. Further, the GST provisions nowhere specify that ITC shall not be available in respect of any outward supplies which is made at a price lower than its procurement value.

It is also argued that section 7 of the GST law doesn’t prescribe that the goods should be recorded as stock in trade for it to be supplied further. Further no such conditions have been prescribed under section 9. And therefore, the AAR has erred in arbitrarily creating distinction between stock in trade and capital goods which is not specifically

provided for in the law.

3. The appellant argues that AAR has erred in its observation that the expression “motor vehicle for transportation of persons” cannot be interpreted by user of the product.
4. The appellant argues that AAR has erred by not considering of favourable ruling with similar facts passed by the same authority in case M/s. Chowgule Industries Pvt. Ltd.

After due consideration of submission made by the appellant and the document on record following observation are made:

1. Use of demo car is inherent and essential part of the business of the appellant.
2. The appellant fulfils the condition in section 16 – eligibility and condition for taking ITC. However, the dispute in the matter is regarding block credit under section 17(5)(a) and exception there to under clause (A) of the said section.
3. The taxpayer as per business agreement is required to capitalize the demo car in its book of accounts.
4. The demo car is held for certain period for demonstration purpose before it is sold.
5. The motor vehicle supplied for demo purpose is supplied at a discounted rate by OEM to the appellant.
6. A favourable ruling in case of M/s. Chowgule Industries Pvt. Ltd. was delivered by AAR bench considering of ex members.
7. There are both favourable as well as unfavourable rulings issued by various state benches for advance ruling.
8. The appellant had made a rectification application before the AAR for non-consideration of favourable ruling. The said application has been disposed without a rectification in the original order.

Having duly considered the facts of the matter and material on record, we find that although the appellant fulfils the condition laid down under section 16, it is also required to clearly establish that the credit of input tax is not blocked under section 17(5).

The Section 16 details the criteria of availment of ITC on tax paid on goods and services. Relevant extracts of the same have been reproduced as follows:

“(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.....”

Thus, from a bare reading of the Section, it can be seen that Section 16 of the CGST Act entitles every registered person to take input tax credit of tax charged on supply of goods or services or both which are used or intended to be used in course or furtherance of business.

The above criteria for availment of credit is broad both in manner as well as intent. ***Meaning of “in the course of” or “furtherance of business”***

While business has been defined under the CGST Act, the terms “in the course” or “furtherance of business” are not defined anywhere under the CGST Act or the CGST Rules made thereunder.

In the course of generally means “something in the progress of process of”. The meaning of “Furtherance” as per Black’s law dictionary: 6th edition 11th reprint 1997, is “act of furthering, helping forward, promotion, advancement or progress”.

Furtherance of business will, thus mean, act of furthering business, helping

forward business, promotion of business, advancement of business or progress of business. Thus, there is no doubt that the demo car is inherent and essential for the business of the taxpayer. Hence same is to be treated as used in the furtherance of the business.

The Section 17(5) of CGST Act refers to a specific provision under GST covering blocked credits or ineligible ITC. The taxpayer cannot claim ITC while paying output tax when they make purchases listed in this provision. Relevant extracts of the same have been reproduced as follows:

“(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;

(aa)”

From the bare reading of the section it clear that ITC shall not be available on motor vehicles with approved seating capacity of not more than 13 persons. It further provides certain exceptions under which the ITC shall be available.

In case before the Authority, the appellant claims that it is duly covered under the clause (A) of said sub-section (5). It tenders its argument that, the intention of the law, as it appears from the expression, ‘for further supply of such vehicles’ is to allow input tax credit in respect of taxpayers dealing with motor vehicles as they are engaged in further supply of such motor vehicles. As the

appellant, the expression "such" bears a wide connotation which does not put any restriction in respect of supply of demo vehicles. It is further argued that when the appellant purchases demo vehicles, such purchases are also meant for further supply, the Appellant capitalizes the demo vehicles and has to keep such vehicle for a specific period of time. Such activities, in any manner, do not change the purpose of further supply.

The expression 'further supply' is not defined under the Act. However, the term 'supply' is defined under the subsection (1) of section 7 and the relevant extract is as under:

"(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made

without a consideration;

(d) (omitted).

(2) ”

Thus the expression ‘further supply’ is to be understood as motor vehicle held for sale, barter, transfer, lease and rental etc. as defined in the section 7. In the present case, by the self- admission of the appellant it is argued that demo car is held for sale after certain years.

Therefore, in view of above discussion the expression “for furtherance of the business” and “for further supply” have different meaning assign to them. The expression for furtherance of the business is to be understood as “used in the business”. Whereas “for further supply” is understood as for sale/supply in the course of business.

With respect to appellants interpretation on the expression further supply of “such motor vehicle” tendered by the taxpayer we note that the expression “such” refers to class of motor vehicles provided under section 17(5)(a) i.e. motor vehicle having approved seating capacity not more than 13 persons. Therefore, the argument that expression “such” bares wider contention cannot be accepted as it is well defined under the said clause.

Now therefore question before the authority is whether the demo car is held for further supply by the appellant? In this regard we note the following:

Whether a good/assets is held for sale in the course of business or to be used in the business can be understood from the actual use the good/assets. In the instant case we note that the AAR has relied upon the accounting treatment of the goods to determine the classification for these purposes.

We further note that the motor vehicles supplied for demo purpose are supplied at a discounted rate. Therefore, are treated as different category of

vehicles as compared to those which are supplied for sales to the appellant.

We find that when the OEM supply vehicles for demo purpose categorised them differently than other vehicles and require the dealership to capitalised such vehicles for a period as per customary practices of the business. We also do not find any reason not to rely on the accounting treatment of the goods to determine its classification. It is understood position that audited books of accounts show true & fair position of the business.

We find no fault in the reasoning that if such demo vehicles are for supply they have to be treated at par with other stock of vehicles, and therefore, accounted as stock in trade. We note that the GST law do not bar the appellant from such accounting rather it is contractual relation which requires the appellant to account the vehicle for demo purpose as capital goods.

In view of forgoing observations, it is concluded that by the treatment of vehicles for demo purpose as capital goods the appellant classifies them as goods for use in the business (used in the furtherance of the business) and not held for sale (for further supply).

Further from the plain reading of section 17(5)(A) it is cleared that ITC on motor vehicles as specified in clause 17(5)(a) shall be available when further supplied. Therefore, we find that the appellant is not holding the goods for further supply and therefore the exception in clause (A) of section 17(5) doesn't apply to the appellant. Thus the ITC on motor vehicles used for demo purpose cannot be allowed as per the provisions of the GST Act.

The appellant has relied upon the following advance ruling in support of its claim for eligibility of ITC on demo car.

- a) M/s Chowgule Industries Private Limited, Maharashtra AAR, TS-1239-AAR-2019-NT.
- b) M/s A M Motors, Kerala AAR, (KER/10/2018), TS-542-AAR-2018-NT.

c) M/s Titania Products Private Limited, JHR/AAR/2020-21/01/07.

We also note that in following advance ruling the AAR and AAAR have negatively answered the advance ruling and have ruled that ITC on demo car shall not be allowed.

- a) M/S. KHATWANI SALES AND SERVICES LLP - 2020 - Authority for Advance Ruling, Madhya Pradesh.
- b) M/S. PLATINUM MOTO CORP LLP - 2019 - Appellate Authority for Advance Ruling, Haryana.
- c) M/s BMW INDIA PVT. LTD. • 2022 (3) TM' 487 • Appellate Authority for Advance Ruling, Haryana.

Further, in case of appeal application by M/S. KHATWANI SALES AND SERVICES LLP before the AAAR, Madhya Pradesh against the ruling given by AAR, Madhya Pradesh, the AAA has upheld the ruling of the AAR, Madhya Pradesh vide Order No. MP/AAAR/05/2020 Dated 20/11/2020.

The Appellate Authority for Advance Ruling, in the state of Haryana has upheld Order of AAR, Haryana in case of M/S. PLATINUM MOTO CORP LLP, the AAAR, Haryana has made the following observation in its order:

“We find that use to which the Demo Vehicles are put to, does not fit 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', but are first put to the mentioned uses. These are disposed of after prolonged use, which may even not restrict to 2 years as mentioned by the Appellant.

As regards to the Applicant's alternative contention that the ITC may be allowed as Input, we have observed 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 Demo Vehicles received by the Appellant have never been received with the intent to simply 'further supply/sell' as such. Input Tax Credit on these vehicles, thus, cannot be allowed."

Further, in the Appeal before the AAAR, Haryana in case of M/s BMW INDIA PVT. LTD has rejected the appeal and upheld the order of AAR, Haryana. The relevant observation is as under:

"As regards to the Applicant's contention that these vehicles 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."

Thus we note that in the matter of allowing the ITC on demo car there are divergent views given by AAR authorities across the country.

Further with respect to favourable ruling in case of M/s Chowgule Industries we note that as per section 103(1) the advance ruling pronounced by the authority shall be binding only on the applicant who had sought it in respect of

any matter listed in section 97(2). Therefore, the said ruling shall not be applicable by De Facto in case of the present taxpayer.

In view of foregoing discussion, we do not find any deficiency in the reasoning provided by the AAR in the present matter before us. Therefore, the appeal of the taxpayer is dismissed.

RULING

ADVANCE RULING UNDER SECTION 98 OF THE CGST/ GGST ACT, 2017.

We upheld the ruling passed by the AAR and therefore the ruling is answered as under: -

The Applicant is **NOT** entitled to avail the Input Tax Credit charged on inward supply of motor vehicles which are used for demonstration purpose in the course of business of supply of motor vehicle as input tax credit on capital goods. As by capitalising the motor car it is treated as asset for use in the business and therefore such motor car cannot be said to be held for further supply.



(Mayank Kumar)
Member



(S. S. Gill, IAS)
Member

Dated: - 15/04/2024

Place: - Panaji – Goa

To,

M/S. Sai Service Private Limited,
36/1, Porvorim North Goa.

Copy to:

1. The Addl. Commissioner of State GST, Panaji – Goa.
2. The Addl. Commissioner of Central GST, Panaji – Goa.
3. The Dy. Commissioner of Central Tax, GST Bhawan, Patto,
Panaji, Goa.
4. The Dy. Commissioner of State Tax, Panaji Ward, Panaji–Goa.
5. The State Tax Officer, Panaji Ward, Panaji–Goa.
6. Office file.
7. Guard file.

