

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF
THE GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

Shri. R.Gopalsamy, I.R.S., Additional Commissioner /Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai 600 034.	Smt. N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu. Chennai 600 003.
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Advance Ruling No. 09/AAR/2023 Dated: 06.06.2023

1. *Any appeal against this Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, under Sub-section (1) of Section 100 of Central Goods and Service Tax Act / Tamil Nadu Goods and Service Tax Act, 2017('the Act' in short) within 30 days from the date on which the ruling sought to be appealed against is communicated.*
2. *In terms of Section 103(1) of the Act, this Advance ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;*
 - (b) *On the concerned officer or the jurisdictional officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab-initio in accordance with Section 104 of the Act.*
5. *At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar*

provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

GSTIN Number, if any / User id		33ADIFS2496M1ZI
Legal Name of Applicant		M/s. Sri Kalaiselvan Sago Factory
Registered Address / Address provided while obtaining user id		No.3/213, Sri Kalaiselvan Sago Factory, New Street, Ulipuram Post, Salem – 636 118.
Details of Application		Form GST ARA – 01 Application Sl.No.30/2022/ARA dated 20.05.2022
Concerned Officer		Centre: Salem Commissionerate State: Attur (Rural) Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Factory/Manufacturing
B	Description (in brief)	
Issue/s on which advance ruling required		Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required		Availability of GST paid by the applicant at the time of purchase or repairs including spares w.r.t Vehicles – JCB used by the business for movement of goods in its place of business as input tax credit.

M/s. Sri Kalaiselvan Sago Factory, No. 3/213, New Street, Ulipuram Post, Salem – 636118. (hereinafter called the ‘Applicant’) is registered under the GST Vide GSTIN 33ADIFS2496M1ZI. They have sought Advance Ruling on the following question:

Availability of GST paid by the applicant at the time of purchase or repairs including spares w.r.t Vehicles – JCB used by the business for movement of goods in its place of business as input tax credit.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.0 The Applicant have stated, *inter alia*,

- that they have purchased a JCB for the purpose of movement of goods inside the factory;
- that the relevant invoice has been enclosed by the dealer at the time of application uploaded seeking for Advance Ruling;
- that the JCB was bought from Suryabala Earth Movers vide Invoice No. 2071350578 dated 9/3/2021 by paying CGST of Rs. 2,13,639.57 and SGST of Rs. 2,13,639.57;

2.1 The applicants have cited the Advance ruling given to M/s Purewal Stone Crusher, Ramnagar Nainital (Uttarakhand) under the advance ruling no. 08/2018-19 dated 11th September 2018. The relevant portions of the cited order were given by the applicant hereunder:

"We find that the Section 17(5) of the Act restrict availment of ITC in respect of GST paid on inputs, capital goods and services. The relevant portion of the same is reproduced as under :

(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;*

We also find that in terms of the provisions of Section 2(76) of the Act the expression "motor vehicle" shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicles Act, 1988 and the same read as under :

Section 2(28) in the Motor Vehicles Act, 1988 : "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted, with engine capacity of not exceeding twenty-five cubic centimetres; twenty-five cube centimetres;"

In view of the above we observe that as per Section 17(5)(a) of the Act, Input Tax Credit shall not be available on "motor vehicle", unless it is used for specified purpose, viz transport, training etc., listed therein. One very important thing in the said section is the definition of the term "Motor Vehicle" under GST. It generally take it to mean that

all types of vehicles, as nowadays everything is run by motor. But as per Section 2(76) of the Act the expression 'motor vehicle' shall have the same meaning as assigned to it in clause (28) of Section 2 of the Motor Vehicles Act, 1988.

We observe that definition in clause (28) of Section 2 of the Motor Vehicles Act, 1988 is an extensive definition which includes all kinds of mechanically propelled vehicles including a trailer. The scope of the Motor Vehicles Act is to bring into its fold all kinds of moving objects plying on the roads under its ambit so as to provide safety measures and regulate traffic. Therefore, any objects which moves on the road by itself requires registration under the Motor Vehicles Act. Now, when we look at that definition, it does not include the vehicles used as mining equipment, like, tippers, dumpers etc. Therefore, under the provisions of GST law, the GST paid on purchase of "Pockland, JCB. Dumper & Tipper" used for transportation of goods will be allowed as ITC.

Our view get support from answer to question 21 of FAQ published in GST Sectoral Series - Mining and the same is extracted as under :

Question 21 : Will GST charged on purchase of all earth moving machinery including JCB, tippers, dumpers by a mining company be allowed as input credit?

Answer: The provision of Section 17(5)(a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Further, in terms of the provision of Section 2(76) of the CGST Act, 2017 the expression 'motor vehicle' shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicles Act, 1988, which does not include the mining equipment, viz., tippers, dumpers. Thus, as per present provisions, the GST charged on purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit"

3.0 The State Jurisdictional authority, the Assistant Commissioner (ST), Attur Assessment Circle vide their Ref. No. in Rc.709/2022/A1, dated : 10.11.2022 had submitted their comments on the subject as below:

The tax payer has not established that the JCB Machine No.2984217 with Engine No.H00293713, Purchased by him on 09.03.2021, vide invoice No.2071350578 from Suryabala Earth Movers is running upon fixed rails. On similar issue the Authority for Advance Ruling for the State of Uttarkhand has already clarified vide ruling **No.08/2018-19, dated 11.09.2018**, that Input Tax Credit will be admissible on GST paid on purchase of "pockland, JCB, Dumper, Tipper"

In as much as the JCB Excavator which fixed with rails and not road on wheels just like a motor vehicle, and not coming under the purview of motor vehicle under the motor vehicle Act for registration as a motor vehicle, it is not at all a motor vehicle. Hence, the condition

imposed in respect of motor vehicle as regards the claim of Input Tax Credit under section 17(5)(a) of GST Act 2017, is not applicable to this case, When there is no restriction in the Act specifically about the ineligibility of Input tax on inward supply of JCB/Excavator fixed with rails other than motor vehicles and so long it is used in connection of taxable outward supplies. The HSN for motor vehicle is 8702, 8704 & 8705, whereas the HSN of JCB / Excavator is 8429 & 8430, the recipient is eligible to Input Tax Credit under section 16(1) of GST Act 2017. Subject to condition imposed in section 16(3) and 17(1), 17 (2) of GST Act 2017.

4.0 The Central Jurisdictional Authority, namely, the Salem Commissionerate, had submitted that there were no pending proceedings against the Applicant. The Joint Commissioner (ST), Intelligence, Salem also has stated that no proceeding is pending against the applicant in his jurisdiction.

5.0 Personal hearing was held in digital platform on 12.01.2023, wherein Shri. Dhiyanesh (Authorized representative- AR) appeared for the Applicant hearing virtually and reiterated their submissions already made in the application. AR stated that input tax credit on JCB has already been claimed after three months from AAR application date. He stated that the JCB is being used for shifting goods between tanks.

6.0 We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions/Additional submissions made during personal hearing and thereafter the comments of the Jurisdictional Authority. The Applicant is before us seeking ruling on the following question:

Availability of GST paid by the applicant at the time of purchase or repairs including spares w.r.t Vehicles – JCB used by the business for movement of goods in its place of business as input tax credit.

6.1 The applicant is engaged in the manufacture and supply of Sago (Sabudhana) from Tapioca roots. Sago is manufactured by the applicant by crushing tapioca roots and the starch extracted is stored in large tanks. The starch is washed again, rolled into granules, roasted and then dried. The resultant sago is supplied on payment of appropriate tax.

6.2 The Applicant has stated that they have purchased a **JCB 3DX** model for the taxable value of Rs.23,73,773/- with CGST Rs.213639.57 and SGST Rs.213639.57 from M/s Suryabala Earth Movers, Salem-636005 vide Invoice No.2071350578 dated 09-03-2021. According to the applicant, the JCB that is purchased is used for in-house transport of starch from one tank to another or to any machines that required it as it would speed up the production process.

6.3 The main issue before this authority is whether GST paid on JCB (including spares) used by the Appellant for movement of goods in its place of business is available as input tax credit. From the submissions before us, we find that the question which needs answer is on

the eligibility to credit of the tax paid on the Inputs/Capital Goods procured by Appellants used in the factory of manufacture of the Appellant from where taxable product is supplied. The Question and the clarifications raised are covered under Section 97(2)(d) of the GST Act, 2017 and therefore admissible before this authority for consideration and pronouncement of ruling.

6.4 Section 17 of the Act gives the provisions relating to Apportionment of credit and blocked credits. The provision relevant to blocked credit relating to motor vehicles is given under Section 17(5) of the Act, which is given under for ease of reference:

“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;”

Hence, there is a restriction on availment of ITC in respect of motor vehicles and Input Tax Credit is not available on “motor vehicle”, unless it is used for specified purposes like transport, training etc. However, we also find that in terms of provisions of Section 2(76) of the CGST Act, 2017, the expression “motor vehicle” shall have the same meaning as assigned to it in clause (28) of Section 2 of the Motor Vehicle Act, 1988.

6.5 The relevant portion of Section 2(28) in the Motor Vehicles Act, 1988 is given hereunder for ease of reference;

“motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;”

6.6 Further, in the FAQ published in GST Sectoral Series – mining the question regarding availability of input credit on earth moving machinery including JCB, tippers, dumpers is answered in detail. The relevant extract of the same is as under:

Question 21: Will GST charged on purchase of all earth moving machinery including JCB, tippers, dumpers by a mining company be allowed as input credit?

Answer: The provision of Sec. 17(5) (a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Further, in terms of the provision of Section 2(76) of the CGST Act, 2017 the expression 'motor vehicle' shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicle Act, 1988, which does not include the mining equipment, viz., tippers, dumpers. Thus, as per present provisions, the GST charged on purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit.

6.7 Further, in the case of Goodyear India Vs UOI [1997 (92) E.L.T. 14 (S.C.)], the Hon'ble Apex Court had observed, inter alia that;

"A close reading of the definition "motor vehicle" in Item 34 reveals that the striking ingredient thereof is that it should have been "adapted for the use upon roads". Merely because the areas on which such heavy movers traverse might sometimes include roads also is not enough to hold that they were "adapted for use upon roads". Such use of the heavy mover on the road may only be ancillary or incidental to the main use of it."

6.8 On the conjoint reading of Section 2(28) of the Motor Vehicles Act, 1988, the FAQ published in GST Sectoral Series – mining and the Hon'ble Apex Court judgement cited *supra*, it is apparent that Clause (28) of Section 2 of the Motor Vehicles Act, 1988, does not include mining equipments viz., JCB, tippers, dumpers. Consequently, the GST charged on purchase of earth moving machinery like JCB used for transportation of taxable goods is eligible to be allowed as input credit.

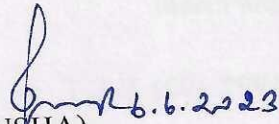
6.9 Manufacturing is most dependent on material handling systems and equipment. Some material handling equipment includes pallet trucks, order pickers, forklifts, Tipper Lorries, Dump Trucks and other machines/vehicles depending on the manufacturing processes as well as suitability felt by the manufacturers. In the instant case, the applicant uses the JCB that has been purchased for transportation of goods inside their factory premises.

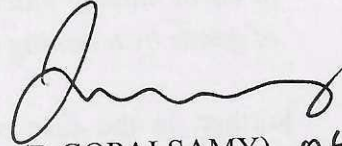
6.10 In the circumstances stated above, we conclude that the appellant is eligible for GST paid by them at the time of purchase or repairs including spares w.r.t. vehicles- JCB used in the business for movement of goods in its place of business to be claimed as input tax credit subject to conditions stipulated in Section 17(5)(a)(ii) and Section 17(2) of CGST Act, 2017.

7.0 In view of the above we rule as under:

RULING

GST paid by the applicant at the time of purchase or repairs including spares w.r.t. vehicles- JCB used by the business for movement of goods in its place of business, is available as input credit under 16(1) subject to the conditions stipulated in Section 17(5)(a)(ii) and Section 17(2) of CGST Act, 2017.


(N.USHA)
Member (SGST)


(R.GOPALSAMY) 06/06
Member (CGST)



To

M/s. Sri Kalaiselvan Sago Factory,
No.3/213, New Street, Ulipuram Post,
Salem – 636 118.

(By RPAD)

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Salem Commissionerate,
No.1, Foulkes Compound,
Anaimeedu, Salem – 636 001.
2. The Assistant Commissioner (ST),
Attur (Rural) Assessment Circle,
No.32-21, Gandhi Nagar,
Near Railway Station,
Attur – 636 102.
3. Master File/ Spare – 2.