



**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
VANIJA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)**



ADVANCE RULING NO.HAR/HAAR/R/2018-19/17
(In Application No.: 17/2018-19, dated 10.07.2018)

Name & Address of the Applicant	: M/s BMW India Pvt. Ltd., 2 ND Floor, Oberoi Centre, Building No. 11, DLF Cyber City, NH-8, Gurugram (East).
GSTIN of the Applicant	: 06AABCB7140C1Z9
Date of Application	: 10.07.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (d) Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	: 09.10.2018
Present for the Applicant	: Sh. R. Muralidharan, CA, Sh. Shankey Aggarwal, Advocate, Sh. Arun Gulati, Manager, Sh. Rahul Kumar, ETO.

STATEMENT OF FACTS AS PER APPLICANT

1. BMW India Pvt. Ltd. (hereinafter referred to as the 'BMW India' / 'the Company') is a group company of the BMW Group and is engaged in the manufacturing, trading & selling of motor vehicles, spare parts, accessories and related services in India. The Company has various units, which are distinctively registered under the Goods and Services Tax legislations. The current application is in respect of the place of business of the Company at Gurgaon, Haryana (hereinafter referred to as the 'Gurgaon Unit' / 'the Applicant') which has the GSTIN No. 06AABCB7140C1Z9. [Copy of the registration certificate of the Company is enclosed as **Exhibit-A**]

2. The Company also has a manufacturing plant in Chennai (GSTIN No. 33AABCB7140C1ZC) wherein different models of BMW vehicles (BMW 3, 5, 7 Series, X1, X3, 3GT, 6GT, X5 models and MINI) are produced using domestically procured parts as well as parts imported from BMW Group Companies. Apart from the plant in Chennai, the Company has also established a warehouse in Mumbai for distribution of parts across India (GSTIN No. 27AABCB7140C1Z5) and a corporate office as well as a training centre in Gurgaon. BMW vehicles and parts are distributed in India through dealer network spread across major metropolitan centers of the country.

Stock Transfer of vehicles to the Applicant Unit

3. The above-mentioned motor vehicles are manufactured in India by the Chennai Unit of the Company. Apart from selling vehicles directly to dealers, Chennai unit of the Company also stock transfers a few vehicles manufactured at the Chennai plant to the Gurgaon unit i.e. the present Applicant. The Company understands

that its different units are deemed as different persons for the purposes of the GST legislations (in terms of Section 25(4) of CGST Act). We therefore understand that the said inter-state stock transfer is subject to levy of Integrated Goods and Services Tax ('IGST') under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred as 'IGST Act') and Compensation Cess under the Goods and Services Tax (Compensation to States) Act, 2017 (hereinafter referred as 'Compensation Cess Act'). Accordingly, applicable IGST and Compensation Cess is discharged by the Company at the time of stock transfer of vehicles from Chennai Unit for further use in business activities at Gurgaon unit. [Sample copies of stock transfer invoices issued by Chennai unit upon the Applicant is enclosed as **Exhibit-B**]

4. At the Applicant's end, these vehicles are registered in Company's name and are put to use for various purposes, as described in detail below. It is important to note that the Applicant always intends to further sell these vehicles (i.e. stock transferred from Chennai unit to Gurgaon unit) to the authorized dealers of Company. As per the internal policy of the Company, these vehicles are generally meant to be used for a very limited period i.e. about 12 months for the specified purposes and thereafter, sold to the dealers. Such vehicles are capitalized in the books of accounts due to applicable accounting standard and Income tax laws requirements.
5. As per the internal guidelines of the Company, inter-alia, these vehicles are used for the following purposes:
 - (i) **Marketing fleet:** Vehicles for undertaking various marketing & promotional activities such as road shows, exhibitions etc.
 - (ii) **Sales Fleet:** Vehicles assigned to corporate sales team for giving it to customers for test drive and product experience.
 - (iii) **Press Fleet:** Vehicles provided to media houses/senior journalists for test purposes.
 - (iv) **Training Fleet:** Vehicles for training of dealers and authorised service centre operators;
 - (v) **Personally Assigned Vehicles:** These vehicles are assigned to employees and expats of the Company primarily for business purposes.

Visitors Cars: These vehicles are in Gurgaon to service visitor transportation needs and business use of employees.

In this regard, the General Guidelines issued by the Company for handling of Company vehicles may be referred. [BMW India Guideline 05, Version 3, Company vehicle is enclosed as **Exhibit-C**]

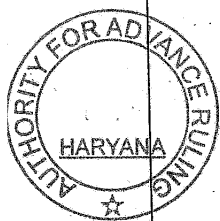
6. It is pertinent to note here that the present Advance Ruling Application is preferred in relation to activities (i) to (iv) above (hereinafter referred to as 'specified business purposes') and detailed nature & use of these fleet cars is explained hereunder:

Sr. No.	Fleet type	Nature of the fleet
1.	Marketing fleet	<u>Vehicles for undertaking various marketing & promotional activities such as road shows, exhibitions etc.</u> These vehicles received by the Applicant are mainly used for sales promotion and marketing activities. These vehicles are displayed at various road shows, trade fares and



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		exhibitions, which increases the presence and visibility of the BMW Brand vehicles. Road shows and exhibitions play an important part to increase the sales of the vehicles to the consumers. Hence, the said activity is integrally connected to the business of the Applicant and qualifies as an activity, which is in course of and in furtherance of business.
2.	Sales Fleet	<p><u>Vehicles assigned to corporate sales team for giving it to customers for test drive and product experience.</u></p> <p>Sales fleet vehicles are vehicles assigned to corporate sales team who further gives it to customers for test drive, events and product experience. Any customer before purchasing a vehicle prefers to test drive the car to understand the look and feel of the car. Similar to marketing fleet, these cars play an important role in sales and brand promotion activity of the Company. The said activity is not only in the course of in furtherance of business but is also very essential for the business of the Applicant.</p>
3.	Press Fleet	<p><u>Vehicles provided to media houses/ senior journalists for test purposes.</u></p> <p>A few cars are also issued to media houses / senior journalists to carry out reviews of the vehicles launched by the Company. These reviews are critical to ensure the visibility of the brand and awareness about the features offered by the Company's vehicles. Thus, these cars are essential for sales promotion of the vehicles, and such activity is in course of and in furtherance of the business of the Company.</p>
4.	Training Fleet	<p><u>Vehicles for sales and aftersales trainings provided to employees of the Company as well as dealer staff;</u></p> <p>These vehicles received by the Applicant are also used for the purpose of training of authorized dealers who also run service centres. Aftersales support to customers is a crucial part of the business of the Applicant. With the help of these vehicles, Dealers and Authorized Service Centre Operators located at different places are trained about repair and maintenance of the vehicle and aftersale support services required for the customers.</p> <p>These training activities is thus vital for the business of the Applicant as without these trainings, the quality after sale support and end customer satisfaction cannot be ensured. Thus, these training activities are also intrinsically connected to the business of the Applicant.</p>

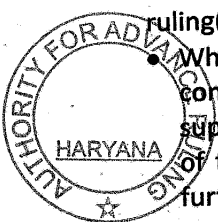


7. Further, the Applicant in adherence to provision of Section 17(5) of the CGST Act, 2017 is not availing any Input Tax Credit in relation to vehicle mentioned in para 5 (v) and (vi) i.e. Vehicles for official use by designated employees and visitors.

8. The vehicles are issued for the specified activities as per the specific instructions from the Gurgaon Unit by the authorised person. In this regard, a vehicle order form is raised by the concerned user, which provides the exact purpose for the vehicles as well as make, model, colour, trim combination etc. Categorisation/

allocation of vehicles for the specified purpose is made before time of dispatch of vehicles for stock-transfer itself. Thus, it is clear that the vehicles are pre-assigned for the particular specified purposes. Further, the Company's policy does not allow re-assigning of the vehicles or usage of vehicles for any other purpose at the later stage. For example, a vehicle once assigned for press fleet cannot be used or re-assigned for marketing & promotional activities and vice versa. [Copies of vehicle order form and handover form is collectively enclosed as **Exhibit-D**]

9. At the time of stock transfer itself, the intention of the Applicant is to further sell the vehicles to dealers after limited use. Accordingly, the Company's policy provides that these vehicles are to be used for a limited period and only for the specified purposes. As per the said policy and established practice of the Company, such vehicles are only meant to be generally used for a period of about 12 months from the date of receipt of the vehicles [refer **para 3.10** of **Exhibit C**]. Thereafter, the vehicles are to be sold by the Company to authorised dealers. The process of further sale of vehicle from BMW India to dealers may take some time [upto 18 months from the date of use of vehicle] depending on demand of the vehicles. From the above, it is clear that the Company always intended to sell the vehicles to dealers after being used for a very limited period.
10. At the time of sale of these cars to the dealers, these vehicles are de-capitalized by the Company and is converted into stock-in-trade by the Company. The Company invites bids for sale of motor vehicles to dealers/ultimate customers. It is important to mention here that presently, the Applicant is paying the GST on sale of such cars as per the provisions of the **Notification No. 8/2018 -C.T. (Rate) dated January 25, 2018** [read with Haryana GST Notification No. 28/2018 dated January 25, 2018] for supply of such old and used cars. The said Notification provides concessional tax on the margin between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply. As per the terms of the said Notification, the Applicant is currently not availing any Cenvat Credit on these vehicles. On sale of old and used vehicles, appropriate GST is discharged in terms of the said Notification. [Sample copies of sale invoice issued by the Applicant to its' dealers for sale of cars is enclosed as **Exhibit-E**].
11. In the aforesaid backdrop, the Applicant pray this Hon'ble Authority to issue its ruling(/s) on the following question:
 • Whether the Applicant-unit is entitled to avail input tax credit of IGST and Compensation Cess paid on motor vehicles, mentioned in para 5 (i) to 5(iv) *supra*, which are received on stock-transfer basis from one unit to another unit of the Company for limited use in relation to specified business activities and further supply to the authorised dealers?



Question(s) on which advance ruling is required

Whether the Applicant-unit is entitled to avail input tax credit of IGST and Compensation Cess paid on receipt of cars (on stock-transfer basis) for use in relation to specified business activities and thereafter onward supply to dealers after use by the Applicant-unit for a limited period of time?

Applicant's interpretation of law and/or facts, in respect of the aforesaid question(s)

1. It is submitted that the Applicant is eligible to avail input tax credit of IGST and Compensation Cess on the vehicles received by it used for the following specified business purposes:

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- i.) **Marketing fleet:** Vehicles for undertaking various marketing & promotional activities such as road shows, exhibitions etc.
- ii.) **Sales Fleet:** Vehicles assigned to corporate sales team for giving it to customers for test drive and product experience.
- iii.) **Press Fleet:** Vehicles provided to media houses/senior journalists for test purposes.
- iv.) **Training Fleet:** Vehicles for training of dealers and authorised service centre operators.

Conditions for availing Input tax credit as per CGST Act and Haryana SGST Act

2. It is submitted that both the IGST Act and Compensation Act provide for entitlement of input tax credit of IGST and Compensation Cess respectively. Section 20 of the IGST Act provides for application of the provisions of the CGST Act in so far as they *inter alia* relate to "input tax credit". Similarly, Section 11 of the Compensation Act provides for application of provisions of the CGST Act / IGST Act in so far as they *inter alia* relate to "input tax credit". Thus, one is required to traverse the provisions of the CGST Act to determine eligibility for availing input tax credit of IGST and Compensation Cess.

3. Section 16 of the CGST Act provides the eligibility and conditions for taking input tax credit. Relevant part of the said provision is extracted below:

16. Eligibility and conditions for taking input tax credit. —

- (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.

[Emphasis Supplied]

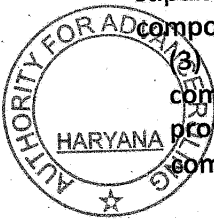
4. From a bare reading of the above provision, it is clear that in order to avail input tax credit on any goods or services, the same must be used or intended to be used 'in the course or in furtherance of business'. Further, Section 16(2) of the CGST Act provides for certain procedural requirement such as having an original copy of tax invoice/debit notes in order to avail input tax credit. Section 16(3) of the CGST Act stipulates that the Company shall not claim the benefit of depreciation on the tax component of the cost of capital goods:

- (3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

[Emphasis Supplied]

5. It is submitted that the Applicant fulfils the condition under Section 16(1) and also the Applicant will not be claiming any benefit of depreciation on the tax and cess component of the cost of goods. Thus, these provisions stand duly satisfied in the present case.

6. Further, Section 16(4) of the CGST Act provides the time limit to avail input tax credit. It is submitted that there the Applicant undertakes to avail the input tax credit within the stipulated period of time.



Handwritten signature/initials

7. It is important to note that apart from the above general conditions, Section 17(5) of the CGST Act provides additional conditions in relation to input tax credit of motor vehicles. As per the said provision, input tax credit in relation to motor vehicles is only available when such motor vehicles are used in specified taxable services. The said provision reads 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 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;

[Emphasis Supplied]

8. A combined reading of the aforesaid provisions provide that the following substantive conditions must be satisfied by the present Applicant in order to be eligible for availing the input tax credit in respect of such 'motor vehicles':

- (i) Goods must be used or intended to be used in the course or in furtherance of business.
- (ii) The goods must be further used in making specified taxable supplies under Section 17(5)(a) of CGST Act.

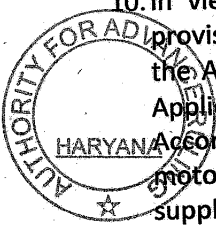
9. In the present case, it is submitted that both the aforesaid conditions have been satisfied by the Applicant as explained below. It is also pertinent to point out that the HGST Act also provides similar to the provisions of the CGST Act without any deviation. Thus once the provisions of the CGST Act in respect of the entitlement of input tax credit stand satisfied, the provisions of the HGST Act will also be considered satisfied and thus input tax credit can be availed in terms of the HGST Act as well.

10. In view of the above, the Applicant submits that both conditions under the provisions of the Act stand satisfied in the present case. The vehicles received by the Applicant are used 'in the course and in furtherance of the business' of the Applicant and also used in the further taxable supply of 'motor vehicles'. Accordingly, the Applicant is eligible to avail input tax credit in respect of such motor vehicles, which are used for the aforesaid specified activities and further supplied to dealers.

Comment of the Officer under section 98 (1) of the CGST/HGST Act, 2017

13. The Deputy Excise & Taxation Commissioner, Gurugram (EAST) being the jurisdictional officer had submitted his comments as required under section 98 (1) of the CGST/HGST Act, 2017 as under:-

It has been submitted that the provisions of section 17 (5) (a) are applicable for availing 1TC, which are re-produced below:



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"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 and other conveyances except when they are used- for making the following taxable supplies, namely: - further supply of such vehicles or conveyances; or Transportation of passengers; or Imparting training on driving, flying, navigating such vehicles or conveyances; for transportation of goods:

-In view of Section 17(5)(a) of GST Act the applicant-unit is not entitled to avail input tax credit of IGST and compensation cess paid on receipt of cars on stock transfer basis. Since the applicant has not purchased the cars for the purposes mentioned in the Section 17(5) (a) of GST Act. Rather the same have been capitalised as admitted by the applicant in the statement of facts.

Record of Personal Hearing

14. Personal hearing in the case was conducted on 09.10.2018. The applicant besides reiterating the submissions made in their application had given additional submissions which were taken on record.

Discussion and finding of the authority

15. 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.
16. During discussions 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 the relevant rule 43 of the CGST/HGST Rules.

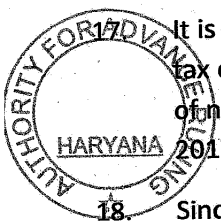
It is also worth noting that the specific provisions regarding admissibility of input tax credit on motor vehicles for transportation of persons upto a seating capacity of not more than 13 person are contained in section 17 (5) of the CGST/HGST Act 2017.

18. 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.

Advance ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussions and findings the advance ruling on the questions is pronounced as under: -

Question: Whether the Applicant-unit is entitled to avail input tax credit of IGST and Compensation Cess paid on receipt of cars (on stock-transfer basis) for use in relation to

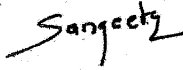



specified business activities and thereafter onward supply to dealers after use by the Applicant-unit for a limited period of time?

Ruling: In the backdrop of the discussions 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.

Ordered accordingly.
To be communicated.

Dated : 09.10.2018
Panchkula.


(Sangeeta Karmakar)
Member CGST


(Vijay Kumar Singh)
Member SGST

Regd. AD/Speed Post

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Copy to

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