

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 32/ 2020

Date : 20-05-2020

Present:

1. **Dr. M.P.Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
2. **Sri. Mashhood ur Rehman Farooqui,**
Joint Commissioner of Central Tax Member (Central Tax)

1.	Name and address of the applicant	M/s SAI MOTORS No.215, 100 Ft Ring Road, 3 rd Stage, 3 rd Phase, 2 nd Block, Banashankari, Bengaluru – 560 085
2.	GSTIN or User ID	29AASFS7259M1Z0
3.	Date of filing of Form GST ARA-01	09.01.2020
4.	Represented by	Sri. Harish.S. Chartered Accountant & Duly Authorised Representative
5.	Jurisdictional Authority – Centre (EWDS)	The Principal Commissioner, Central Tax, Bangalore West Commissionerate, 100 feet road, Banashankari III stage, Bengaluru-560085
6.	Jurisdictional Authority – State	LGSTO-60, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN HDFC20012900071681 dated 08.01.2020 and Rs.5,000/- under KGST Act vide CIN HDFC19032900089173 dated 13.03.2019.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

M/s Sai Motors, # 215, 100 Feet Ring Road, 3rd Stage, 3rd Phase, 2nd Block, Banashankari, Bengaluru-560085, having a GSTIN 29AASFS7259M1Z0, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

SAI MOTORS

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2. The applicant is a proprietary concern registered under the provisions of the Goods and Services Act, 2017. The applicant states that he is engaged in the business of supplying two wheelers.

3. The applicant has sought advance ruling in respect of the following questions:

Whether he can bill the scooter at 5% GST under HSN 8713 along with retro-fitment and it shall not restrict any input tax credit on purchase of vehicle under HSN 8711 at 28% GST

4. The applicant furnishes some facts relevant to the stated activity.

- a. The applicant states that he purchases vehicles from M/s Hero Motocorp Ltd., under HSN 87112019 which is liable to GST at 28%. He also purchases retro fitment fitting, under HSN 87131090 at GST 5%. This retro fitment fitting is fixed to the vehicles purchased and sold to the differently abled customers.
- b. The applicant states that he is presently collecting GST from the customers of Retrofitted vehicles at two rates – Vehicles at 28% and Retro Fitment Fitting at 5%.
- c. The applicant states that other dealers in the market are selling such vehicles i.e. after fitting retrofitment at GST 5% on the entire sale value including vehicles under HSN 87131090. Hence some of his differently abled customers were demanding him to charge GST on entire sale value of the vehicles (after retrofitment) at 5% under HSN 87131090. Hence, the applicant has sought to know whether he can bill the entire value of the vehicle after retrofitment, purchased by differently abled customers at 5% under HSN 87131090.
- d. The applicant states that if he is allowed to sell the vehicles at 5%, whether he can claim ITC on the entire 28% paid for purchase of vehicles even though on sale he will be allowed to charge 5% on the output.

5. The applicant states that the goods sold by him i.e. retrofitted two wheelers are to be classified under serial number 243 under HSN 8713 – Carriage for disabled persons, whether or not motorized or otherwise mechanically propelled and is liable to tax at 5%. He states that the Cars for physically handicapped persons under HSN 8703 are given special treatment subject to conditions and the two wheelers require more facility for specially abled compared to Motor Car.

PERSONAL HEARING: / PROCEEDINGS HELD ON 20.02.2020

6. Sri Harish.S., Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings on 20.02.2020 before this authority and reiterated the facts.

7. DISCUSSION & FINDINGS

7.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by him when he appeared for the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

7.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

7.3 The applicant herein purchases the two wheelers, covered under the HSN 8711 20 19 and also purchases the retro fitment equipment, covered under HSN 8713 10 90. The applicant then retrofits the equipments to the two wheelers and makes it compatible to use of differently abled persons. The applicant contends that the impugned retro fitted vehicles qualify to be motorized carriages for disabled persons & merits classification under heading 8713 1090 and hence attracts GST @5%, in terms of Entry No.243 of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017.

7.4 It is observed that Entry No.243 of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 specifies that the goods having description of ***“Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled”*** attract 5% GST (CGST-2.5% & SGST-2.5%). The applicant contended that their product “Retrofitted two-wheeler” merits classification under heading 8713. Therefore, the question before us to decide is whether the impugned retrofitted two-wheeler qualifies to be classified under heading 8713 or not. Thus, we proceed to examine the classification of the said product i.e. Retrofitted two-wheeler. We draw attention to the Chapter Heading 8713 which reads as under:

8713	Carriages for disabled persons, whether or not motorized or otherwise mechanically propelled
8713 10	- Not mechanically propelled
8713 10 10	--- Wheel chairs for invalid
8713 10 90	--- Other
8713 90	- Other
8713 90 10	--- Wheel chairs for invalid
8713 90 90	--- Other

7.5 In view of the above, it could easily be inferred that the impugned product has to be a “Carriage for disable person” so as to get classified under heading 8713 & to attract 5% of GST.

7.4 In the instant case, it is an admitted fact that the applicant purchases a vehicle i.e. two-wheeler and also certain additional parts/accessories to retrofit the said vehicle with the said parts/accessories. The word ‘Retrofit’ as a noun is *an act of adding a component or accessory to something that did not have it when manufactured*. Therefore, the applicant is adding certain components to the two wheeler by retrofitting the same i.e. an attachment is added to the said two wheeler (motor cycles) to enable it to be driven by the disabled person. This does not change the basic feature of the two wheeler. In the instant case the two-wheeler was neither specially designed or constructed nor altered to change its basic structure, after retrofitment.

7.5 Explanatory Notes to the **Harmonized Commodity Description and Coding System** specifies that the heading 8713 excludes Normal vehicles simply adapted for use by disabled persons or a bicycle fitted with a special attachment and pedalled with one foot and Trolley-stretchers. In the instant case the two-wheeler is simply retrofitted with additional components / accessories to enable it for use by disabled persons. Therefore, the impugned retrofitted two-wheeler gets excluded from the heading 8713.

7.6 In view of the above, the retro fitted two-wheeler is nothing but a two-wheeler purchased by the applicant under heading 8711 20 19, added with additional components/accessories and hence does not change its basic structure. Therefore, the said retro fitted two-wheeler merits classification under heading 8711 20 19 only.

7.7 The next issue before us to decide is whether the tax paid on two wheelers and retrofit equipment is available to the applicant as input tax credit or not. In the instant case the two-wheeler is purchased and is retrofitted with accessories to supply as retrofitted vehicle under heading 8711 20 19. We draw attention to Section 17(5) of the CGST Act 2017, which is relevant and reads as under:

“(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

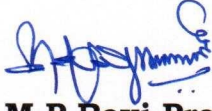
(C) imparting training on driving such motor vehicles;

In the instant case the applicant purchases the two wheelers for "further supply of such motor vehicles", though they add certain accessories to retrofit the said vehicle. Thus, the applicant is entitled to avail input tax credit of the tax/es paid on the said motor vehicles and the retrofit equipment as the accessories are utilized for value addition of the said motor vehicle.

8. In view of the foregoing, we pass the following

R U L I N G

The retrofitted vehicle merits classification under heading 8711 20 19 and hence attracts GST @ 28% and applicant is entitled for input tax credit of tax paid on purchase of vehicle i.e. scooter.



(Dr.M.P.Ravi Prasad)

Member

Place : Bengaluru
Date : 20-05-2020
Karnataka Advance Ruling Authority
Bengaluru - 560 009



(Mashhood ur Rehman Farooqui)

Member

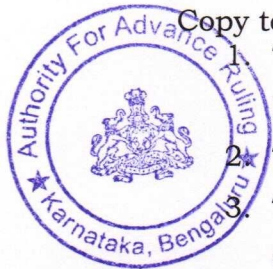
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bangalore West Commissionerate, 100 ft Road, Banashankari III stage, Bengaluru-560085.
4. The Asst. Commissioner, LGSTO-60 , No. 642, 2nd Floor, Pioneer Plaza, Kenchenahalli Main Road, Rajarajeshwari Nagar, Bengaluru - 560098.
5. Office Folder.



It is requested that you please advise the Commission of any further action taken.

In the instant case the applicant purchases the two-wheelers for further supply of such motor vehicles. Through their add certain surcharges to collect the same. Thus the applicant is entitled to every input tax credit of the tax on the sale of the motor vehicles and the input tax credit on the purchase of the same is not available to the applicant.

In view of the foregoing, we pass the following

RULING

The applicant is entitled to input tax credit of 1% on the purchase of the motor vehicles. The input tax credit is not available to the applicant on the sale of the motor vehicles.

(Sd/-) (Signature of Member)

MEMBER

Karnataka Advanced Pricing Authority
Bangalore - 560 002

(Sd/-) (Signature of Member)

MEMBER

Karnataka Advanced Pricing Authority
Bangalore - 560 002

