

GOA AUTHORITY FOR ADVANCE RULING

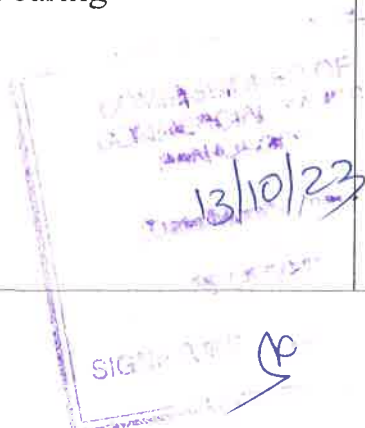
{Constituted under Section 96 of the Goa Goods and Services Tax Act,
2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and
Services Tax Rules, 2017}

BEFORE THE BENCH OF

Shri Vishant S. N. Gaunekar, Additional Commissioner of SGST, Goa.
Shri. Basant Kumar, Additional Commissioner of CGST, Goa.

Advance Ruling No. GOA/GAAR/04 (R) of 2023-24/ 2337

Name of the Applicant	Sai Service Private Limited
Address	36/1, Alto Porvorim, Bardez, Goa 403521
GSTIN	30AABCS4998M1ZW
Date of Application	11.05.2023
Under Section 102 of the CGST/GGST Act, 2017 under which rectification is sought for apparent mistakes	For non-consideration of favorable ruling with similar facts by the same Authority in the order.
Date of Hearing	04.07.2023
Persons Present for Hearing	Shri N. D. Bhandary, Sr. General Manager, Shri Dattaprasad Shankhawalkar, Asstt. G.M. of applicant along with Shri Nitin Vijaivergia & Shri Adarsh Shetty of M/s. P.W & Co. LLP and Shri T. Y. Thok, Ld. Chartered Accountant for the applicant.



PROCEEDINGS

(Under Section 102 read with 98 of the Goa Goods and Services Tax, Act 2017)

The present rectification application has been filed under Section 97 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 Taxpayer **M/s. Sai Service Private Ltd., 36/1, Alto Porvorim, Bardez, Goa 403521** seeking rectification of the Order of Advance Ruling in respect of the following alleged apparent mistakes:

- For non-consideration of favorable ruling with similar facts by the same Authority in the order.

BRIEF FACTS

Applicants Background:

M/s. Sai Service Private Limited, 36/1, Alto Porvorim, Bardez, Goa 403521 is a registered taxable person holding GSTIN 30AABCS4998M1ZW. The Applicant is engaged in the business of sale of automobiles having a dealership of various automobile brands. The applicant had filed his Advance Ruling Application vide ARN AD301222000924U dated 30/12/2022. The said application was processed and was called for hearing on 27/02/2023 at 3.30 p. m vide notice No. ADC/Advance Ruling-04/2022-23/3316 dated 07/02/2023. Upon hearing the matter, the advance ruling order was issued vide No. GOA/GAAR/04 OF 2022-23/73 dated 06/04/2023.



INTERPRETATION OF LAW AND/OR FACTS BY APPLICANT

M/s. Sai Service Private Limited (hereinafter referred to as 'the Applicant' or 'the company' or 'Sai Services' or 'the Dealership') is engaged in the business of sale of automobiles having a dealership of various automobile brands. The company is also involved in providing servicing, repair, and related auxiliary services with respect of motor vehicles.

The Applicant has its showrooms and services centres in the state of Goa in various location where the aforementioned services are performed. In order to promote sale of vehicles. The applicant keeps certain vehicles for demonstration purpose in the showrooms for a specific period in order to offer test drives to the customers. These vehicles are procured by the applicant and capitalized in the books of accounts. Post usage as demonstrations vehicles for the specific period, these vehicles are sold as a second-hand vehicle, whenever a suitable buyer is identified.

In this regard, the applicant had approached this AAR for seeking a ruling on the question that, *"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."*

This AAR has vide order No. ZD300423005248Z dated 06/04/2023 received by applicant on 12-04-2023 has held that the applicant is not 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. As by capitalizing the motor care it is treated as asset for use in the business and therefore such motor car cannot be said to held for further supply.

Submissions by the Taxpayer

The Taxpayer in its submission dated 11th May 2023 has claimed that there is an apparent mistake in the Order and has provided argument/reasons in support for claiming that there is mistake in the Order, summary of which is as under:



- 1) Non-Consideration of Favourable Ruling with similar facts by the same Authority in the Order.
- 2) The fact pattern involved in both application i.e. M/s Chowgule Industries Pvt. Ltd. and that of the applicant are similar, where in both the companies had purchased demo vehicle against tax invoices from the supplier on payment of taxes. These demo vehicles are capitalized by both parties, as fixed assets in their books of accounts.
- 3) Applicant has also furnished various judgments/orders passed by various forums in support of the argument that non-consideration of an order/judgment passed in a similar case was considered as an error which is apparent on the record.

Further vide letter date 04th July, 2023 has addition submissions, summary of which is as under:

- 1) Request to consider previous ruling by the same authority.
- 2) Request to consider similarity of facts in both rulings.
- 3) Accounting treatment of capitalization is in line with IND-AS.
- 4) Request to consider previous Judgment.

PERSONAL HEARING

Shri N. D. Bhandary, Sr. General Manager, Shri Dattaprasad Shankhawalkar, Asstt. G. M. of the applicant along with Shri Nitin Vijaivergia & Shri Adarsh Shetty of M/s. P.W. & Co. LLP and Shri T. Y. Thok, Ld. Chartered Accountant appeared at personal hearing on behalf of the applicant and they were heard. The authorized representatives appeared for personal hearing on 04/07/2023 before this authority and reiterated the points deliberated in written submissions made along with application.

The A.R. have also informed that applicant has also preferred an appeal before the Appellate Authority of Advance Ruling(AAAR).



Relevant Provisions of GST Law

Extracts of Section 102 of the Central Goods and Services Tax Act, 2017 are reproduced herein below.

“Section 102. Rectification of advance ruling. -

The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or section 101C, respectively, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant/ appellant, the Authority or the Appellate Authority within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.”

FINDINGS AND DISCUSSION

The Taxpayer in his submissions in support of rectification of order has submitted that order has apparent mistakes as it has not considered favorable ruling with similar facts.

The taxpayer's arguments is that in the order issued by AAR, there is no reference to a favorable ruling given earlier in the case of M/s. Chowgule Industries Private Limited, 2019 (7) TMI 844 Dated 29/03/2019. According to Taxpayer this is an apparent mistake and needs rectification.



We have perused the office file pertaining to AAR decision dated 06/04/2023. A copy of the previous ruling referred by the applicant is found on record in the file which was presented by the applicant before AAR in support for consideration. The applicant had produced a copy of that previous ruling before AAR, the same was also argued during oral arguments before the AAR and therefore, the contention of the applicant that said ruling was not considered by the AAR is not factually correct.

Merely, because the AAR has not clearly mentioned about said decision in the Order dated 06/04/2023 does not necessarily mean that it amounts to an apparent mistake. If the applicant had not produced a copy of said decision before AAR and if it was not relied upon or argued before AAR, than at least it was possible to term it as an apparent mistake.

But when the previous ruling was thoroughly discussed and deliberated during arguments, and thereafter AAR chooses to defer from the earlier decision and the AAR in the original order dated 06/04/2023 has spelled out the reasons and the provisions on the basis of which the conclusion in the matter has been made.

Thus, we are of the considered opinion that non-mentioning of previous ruling/order in case of M/s. Chowgule Industries Private Limited, 2019 (7) TMI 844 in the original order dated 06/04/2023 does not amount to apparent mistake.

Therefore, the present application for rectification is not maintainable. If this rectification application is entertained, it would amount to hearing an Appeal against its own decision. The decision dated 06/04/2023 is given on merits and the AAR has chosen to defer from its earlier decision in the similar facts and reasons for the same are recorded in the Order.

It is also to be noted that the taxpayer has also simultaneously filed an Appeal



before the Appellate Authority for Advance Ruling(AAAR) against this decision dated 06/04/2023 and same is presently sub-judice.

If according to the Taxpayer the order dated 06/04/2023 suffered from any error apparent on the face of the record, and it is within the scope of section 102 of GST Law, than there is no need to assail the Order by filing an Appeal, but a mere filing of rectification application would suffice. This would mean that except for the correction of error, the order is acceptable to applicant.

But when applicant files an Appeal before the AAAR, this act itself means that said Order is not acceptable to applicant on its merits, which means the decision was made by AAR on merits and its not an apparent mistake on the face of record. It is not open for the applicant to simultaneously file an Appeal before AAAR and also file rectification application before AAR stating that its not a decision on merits but an apparent mistake.

In view of above discussion and for above recorded reasons, we find that the rectification application is not maintainable as there is no any error apparent on the face of the record. The applicant has rightly filed an Appeal before the AAAR and it is for the Hon'ble AAAR to give its decision on the issue.

RULING

DECISION UNDER SECTION 102 OF THE CGST/ GGST ACT, 2017 ON RECTIOFICATION APPLICATION.

In view of above discussion and for above recorded reasons we pass the following Order.

The application for rectification filed under Rectification No. ZD300523000350F dated 11/05/2023 is hereby dismissed.



Proceedings stands disposed.


(Basant Kumar)
Member




(Vishant S. N. Gaunekar)
Member

Dated: - 12/10/2023

Place: - Panaji, Goa

To,

M/s. Sai Service Private Limited,
36/1, Alto Porvorim, Bardez, Goa 403521

Copy to:

1. The Commissioner of State GST, Altinho, Panaji, Goa;
- ✓ 2. The Commissioner of Central GST, Patto Plaza, Panaji, Goa;
3. The Dy. Commissioner of State Tax, Mapusa Ward, Mapusa, Goa;
4. The State Tax Officer, Mapusa Ward, Mapusa, Goa;
- ✓ 5. Office File;
6. Guard File.

