



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)
Sri Sahil Inamdar, Additional Commissioner IRS (Central Tax)

A.R.Com/24/2022

Date: 01.08.2023

TSAAR Order No. 13/2023

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Sai Service Pvt. Limited, 7-2-C-33,34, Sanathnagar Industrial Estate, Sanathnagar, Hyderabad, Telangana, 500018 (36AABCS4998M1ZK) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.
4. **BRIEF FACTS OF THE CASE:**

Statement of relevant facts as per the applicant having a bearing on the question(s) on which Advance Ruling is required is reproduced below-

The Applicant M/s. Sai Service Pvt Limited is a private limited company, is registered under Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') in the state of Telangana vide GSTIN 36AABCS4998M1ZK and is also registered in other states. The Applicant is an authorized car dealer for MSIL for supply of four-wheeler vehicles, spares and for servicing of vehicles

The Applicant is engaged in the business of supply of automobiles having dealerships of MSIL, Bajaj, KTM, & Chetak Technology Limited. The Applicant is also involved in providing servicing, repair, related auxiliary services with respect to motor vehicles. It also trades in pre-owned cars. The copy of registration certificate is enclosed herewith and marked as Annexure-1.

As a part of its day-to-day business, the Applicant requires certain demo vehicles for demonstration purpose in the showrooms. Every model is registered unlike normal vehicles further, this model of demo cars are used for demonstration for a period of two years or 40,000 KMs whichever is earlier. These vehicles are used for providing test drives to its potential customers, in order for them to understand the look and feel of the vehicle. Basically, due to the

changing demands of the customers and to adhere to their requirement this works as an essential part of sales promotion activity with facilitates sale of cars. It is also an important element for executing sales.

As per dealership norms with MSIL, the Applicant is required to procure these vehicles at base model level (per fuel type) up to a maximum of two units per showroom. The policy document is enclosed herewith and marked as Annexure-2.

These demonstration vehicles are procured by the Applicant from MSIL against a tax invoice. MSIL provides these vehicles at a discount on the basic price of vehicle (post launch price in case of a new model/variant) as per the MSIL policy.

These vehicles are capitalized in the books of accounts as Fixed Assets. Presently, as the Applicant does not claim input tax credit of the tax paid on these vehicles. The Applicant claims depreciation on the same under the Income tax Act.

As per the MSIL policy, these vehicles are allowed to be used as a demo vehicle for a period of two years or up to its usage of 40,000 KMs whichever is earlier. In some cases, even after the said time limit, the vehicle is continued as a demo vehicle. After its use as a demo vehicle, these vehicles are sold as second-hand vehicles to customers, basis the type of customer i.e., either B2B or B2C.

Presently, the company does not avail Input Tax Credit (ITC) of the said demonstration vehicles during the procurement from MSIL. At the time of sale to customers as a used motor vehicle, these vehicles are taxed in accordance with the Notification No. 08/2018 - Central Tax (Rate) dated 25-January-2018, wherein value is determined on the margin method i.e. in case of registered persons who has claimed depreciation under Section 32 of the Income Tax Act, 1961 on the said goods, the value that represents the margin of the supplier shall be difference between the consideration received for the supply of such goods and the depreciated value of such goods on the date of supply.

The Applicant intends to avail the ITC on the procurement of such vehicles used for demonstration purposes and will not be availing the benefit under the above-mentioned notification at the time of sale of such vehicles i.e., the applicant will pay the applicable taxes on sale value at the point of sale. Hence this application.

5. QUESTIONS RAISED:

Q1. 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?

6. APPLICANT'S INTERPRETATION OF THE LAW

The Applicant procures the motor vehicles used for the purpose of demonstration from MSIL against a tax invoice which are capitalized in the books of accounts of the Applicant as capital goods under Fixed Assets of the Company. The Applicant will not be claiming the depreciation on the GST component of the said vehicles, nor would claim the GST component as a business expenditure u/s 37 of the Income Tax Act. The Applicant intends to follow the method as referred in para 1.9.

In order to determine whether input tax credit shall be available on procurement of the said demonstration vehicles, the Applicant would like to place reliance upon the provisions of Section 16(1) of the CGST Act, which states that:

Quote

*"*Section 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."

Unquote

To further evaluate the aspect of ITC eligibility, it is important to refer to the following definitions provided under Section 2 of CGST Act, 2017 which states that –

Quote

(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business

(19)"capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;

(17) "Business" includes -

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) 5[activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Unquote

The definition of business is an inclusive definition wherein all types of transactions or activities including incidental or ancillary to trade, commerce, manufacture, profession, vocation, adventure or wager or other similar activities are covered. It is immaterial whether such transactions whether such transactions are for pecuniary benefit or not. 2.4 The table below represents how all the conditions pursuant to Section 16(1) of the CGST Act, 2017 are fulfilled by the Applicant

| Sr. No. | Condition | Fulfilled by the Applicant |
|----------------|---|---|
| 1 | (a) Every registered person | The Applicant has taken registration under GST in the state of Telangana vide GSTIN 36AABCS4998M1ZK |
| 2 | (b) be entitled to take credit of input tax charged on any supply of goods or services or both to him | The Applicant is eligible to take credit of Input tax charged on such demo vehicles while purchasing. |
| 3 | (c) which are used or intended to be used | The Applicant as mentioned above purchases these demo cars which are used for the purpose of test drive or which are further intended to be used in the course of furtherance of business. The applicant intends to purchase these demo cars for use in business for test drive and further intends to sale within the limited period as per agreement with MSIL. |
| 4 | (d) In the course of furtherance of business | Further, it is pertinent to note that the phrase 'in the course of furtherance of business' has not been defined under the GST law. Therefore, a reference can be assigned from the dictionary meaning of the term "furtherance" which implies advancement, promotion of scheme etc. Accordingly, it can be said that furtherance of business would imply advancement or promotion of business. Any activity carried on with a purpose to achieve business objectives, business continuity and stability would per se amount to an activity in course or furtherance of business. The Applicant is in the business of sale of cars in which case providing demo car is an essential activity to enhance, advance sales, continue business etc. hence it is in the course of furtherance of business. Accordingly, the said condition is also fulfilled. |

At the outset, the Applicant puts credence upon the interpretation of the above legal provision and submits that as per Section 16(1) of the CGST Act, the applicant 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.

7. PERSONAL HEARING:

The Authorized representatives of the unit namely Gowni Hanuma Reddy, CA , DGM Accounts & Finance, Nitin Vijaivergia, CA from PW & Co LLP, Adarsh shetty, CA from PW & Co LLP, T.Y. Thok, CA, N.D. Bhandary, Senior General Manager, Vikas Agarwal, CA from PW & Co LLP attended the personal hearing held on 24.01.2023. The authorized representatives 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/Applicant M/s. Raminfo Limited, Hyderabad, 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 provisions of the Act.
3. During the course of hearing, the authorized 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 manufacturer to purchase cars for demonstration to the customers.
 - b. That they are under obligation to hold these cars for a minimum period of (2) years or till the time the car runs for a minimum of 40000 KM 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 car is categorized as an asset and capitalized as per the Accounting Standards of India.

- c. That hence they capitalize their purchases. 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 AAR that the vehicles purchased by persons who intend to use for transport of passengers or to impart training in driving such motor vehicles also capitalize 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 asset.

8. DISCUSSION & FINDINGS:

The jurisdiction officer Deputy Commissioner (STU-2) Punjagutta division has informed in his email dated: 12.01.2023 that there is no adjudication pending on the issue raised by the applicant before them. Further that a notice was issued to disallow input tax credit pertaining to insurance paid on demo vehicles. This issue is not before the AAR. Hence a ruling is giving on the clarification sought i.e., the eligibility of the applicant for ITC charged on inward supply of motor vehicles which are capitalized in their books of account as demo vehicles.

The question raised by the applicant is whether ITC can be claimed by a motor vehicles vendor who has purchased certain motor vehicles and has used them as test drive vehicles and disposed them after (2) years. The applicant is purchasing certain Motor vehicles from their suppliers Maruthi Suzuki Industries Limited (MSIL), Bajaj, KDM and Chetak Technology Limited. As per dealership norms with MSIL the applicant is eligible to purchase (2) vehicles per each model for the purpose of test drive vehicles used in their showroom. The sales policy issued by MSIL (SPB No.635, dt. 05.09.2010) stipulates the following norms for purchase and resale of these test drive vehicles:

- a) The test drive vehicles will be registered in the name of the company or dealership and the vehicle will be registered in the name of Director / Partner / Owner wherever corporate tax is higher than the individual tax on the registration of vehicle.
- b) The test drive vehicle may be retained by the dealership for (2) years or upto the usage of 40,000 Kms whichever is higher. If, the condition of the vehicle deteriorates before (2) years or 40,000 Kms of running then a new vehicle can be purchased on approval from the concerned Regional Manager.
- c) The Regional Office of MSIL will authenticate the vehicle as test drive vehicle after checking the registration documents, chasis no., vehicle condition, date of MSIL invoice, demo sticker etc.,
- d) After two years of usage of the test drive vehicle, it may be transferred to the Dealer workshop for use as a replacement vehicle. In case a dealer is already holding the required number of replacement vehicles in his workshop, the test drive vehicle can be sold in True Value. However this will require approval from the respective Regional Manager and the Regional Service Manager. No test drive vehicle can be sold without prior written approval of the Regional Manager and the Regional Service Manager.
- e) Regional office has to regularly monitor the correct usage of the Test drive vehicle and if any dealer is found misusing the test drive vehicle, then the Regional Office can impose a penalty on that dealer by sending a request directly to SLP.
- f) In case it is found that any test drive vehicle has been sold without the written approval of the Regional Manager and the Regional Service Manager or the test drive vehicle is being used for purposes other than test drives, an amount equal to FIVE TIMES the discount amount credited would be debited from the Dealer's account.

As seen from the test vehicle policy of the vendor to the applicant, the vehicle will be registered in the name of the company/dealership and can be retained as a test vehicle only for (2) years. After (2) years the vehicle can be used in workshop as a replacement vehicle or sold with the written approval of the vendor company. From the above it follows that:

- 1) The test vehicle will be capitalised in the books of the company / dealership.
- 2) The vehicle will not be sold upto (2) years or usage upto 40,000 Kms., whichever is earlier.

- 3) The vehicle has to be used in the workshop as replacement vehicle.
- 4) The vehicle can be sold otherwise only with the approval of the vendor company of the applicant.

Sub section 5 of Section 17 of CGST Act, 2017 restricts availment of ITC on motor vehicles purchased by a tax payer even though they may be used in the course of furtherance of business. Thus, from the plain reading of the section no ITC can be claimed by the applicant or purchase of test drive vehicles even though they are used in the course of furtherance of business.

However this restriction is subjected to certain exceptions based on the purpose of usage.

The relevant part of Section 17(5) of the CGST Act, 2017 is abstracted here under:

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;*

The above Sec 17(5) of the CGST Act, 2017 makes a general rule that the purchase of motor vehicles for transportation of persons is not eligible to claim Input Tax Credit(ITC) by such purchaser. However as seen from the abstracted Section above, it introduces (3) exceptions to this rule.

Justice G.P Singh in his book 'Principles of statutory interpretation' defines an exception as follows:

*"Exception is intended to restrain the enacting clause to **particular cases**"*

The particular case which is relevant to the present proceedings is "further supply of such motor vehicles".

The word 'supply' as defined under Section 7 of the CGST Act, 2017 would include sale, lease, rental etc., Thus the exception is made not only for sale of motor vehicles but for the purpose of lease, rent etc., wherein there is no immediate transfer of property in goods and such motor vehicle may be capitalized in the books of the purchaser in case of an intention to lease, rent etc.,

Hence capitalizing the motor vehicle purchased does not make the tax paid on their purchases ineligible for ITC if there is a further supply of such motor vehicles within the meaning of Section 7 of CGST Act, 2017. For example supply of cars for lease / rent etc., can not be made without them being capitalised in the books of such supplier.

And, whether the applicant is eligible for ITC depends on occurrence of a future event i.e., either he retains the vehicle in his work shop as a replacement vehicle or sells such vehicles.

- (i) If the applicant is making further supply of such vehicle is eligible for the ITC claimed.
- (ii) if the applicant is retaining the vehicle for his workshop as replacement vehicle as mentioned in the sales policy of MSIL, he shall not be eligible for ITC as there is no further supply at his hands. Therefore, the ITC claimed by him has to be repaid in cash in view of the amended section 16(4) notified vide notification No. 18/2022, Central Tax dt.28.09.2022 w.e.f: 01.10.2022.

9. In view of the foregoing, we rule as follows:

In view of the above discussion, the questions raised by the applicant are clarified as below:

| Questions | Ruling |
|--|---|
| 1. 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? | a. If the applicant is making further supply of such vehicle is eligible for the ITC claimed. b. if the applicant is retaining the vehicle for his workshop as replacement vehicle as mentioned in the sales policy of MSIL, he shall not be eligible for ITC as there is no further supply at his hands. Therefore, the ITC claimed by him has to be repaid in cash in view of the amended section 16(4) notified vide notification No. 18/2022, Central Tax dt.28.09.2022 w.e.f: 01.10.2022. |


(S.V. KASI VISWESWARA RAO)
ADDL. COMMISSIONER(STATE TAX)


(SAHIL INAMDAR)
ADDL. COMMISSIONER(CENTRAL TAX)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
M/s. Sai Service Pvt. Limited,
7-2-C-33,34, Sanathnagar Industrial Estate,
Sanathnagar, Hyderabad,
Telangana-500018.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Medchal Commissionerate, III Floor, Medchal GST Bhavan, 11-4-649/B, Lakdikapul, Hyderabad – 500 004.

Copy to:

3. The Assistant Commissioner (ST), Punjagutta Division, Punjagutta (STU-2) Circle.