

GOA AUTHORITY FOR ADVANCE RULING

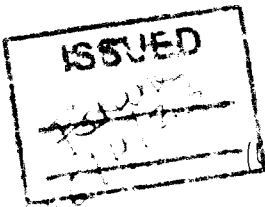
[Constituted under Section 96 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and Services Tax Rules, 2017]

BEFORE THE BENCH OF

Smt. Sarita S. Gadgil, Additional Commissioner of SGST, Goa.
Shri. Basant Kumar, Additional Commissioner of CGST, Goa.

Advance Ruling No. GOA/GAAR/04 of 2022-23/ 113

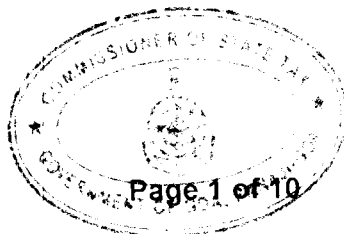
Name of the Applicant	Sai Service Private Limited
Address	36/1, Alto Porvorim, Bardez-Goa, 403521
GSTIN	30AABCS4998M1ZW
Date of Application	30.12.2022
Under Section 97(2) of the CGST/SGST Act, 2017 under which question raised	Whether the applicant is entitled to avail the Input Tax Credit charged on 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.
Date of Hearing	27.02.2023
Persons Present for Hearing	Shri Nitin Vijaivercia, Shri Adarsh Shetty, Dr T. Y Thok (C.A), Shri M. D. Bhandary, Sr. G.M and Shri Dattaprasad Shankhawalkar, Asstt. G.M



PROCEEDINGS

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

The present 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**') **Sai Service Private 36/1, Alto Porvorim, Bardez-Goa, 403521.**, seeking an Advance Ruling in respect of the following questions:



- Admissibility of input tax credit of tax paid or deemed to have been paid.

BRIEF FACTS

Applicants Background:

Sai Service Private 36/1, Alto Porvorim, Bardez-Goa, 403521, and hold GSTIN: 30AABCS4998M1ZW. The Applicant is engaged in the business of sale of automobiles having a dealership of various automobile brands. The company is also involved in provide servicing, repair, and related auxiliary services with respect to motor vehicles., in respect of which the applicant is seeking through the advance ruling for the purpose of determination of the following question:

CLARIFICATION REQUIRED ON THE BELOW POINTS:

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.

INTERPRETATION OF LAW AND/OR FACTS BY APPLICANT

1. Inward supply of motor vehicles used for demonstration purpose by the applicant are in the course of furtherance of business.

The applicant submits that it fulfils all the conditions laid in the section 16(1) of GST Law. It further clarifies that "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."

The applicant further gives its interpretation of the expression "used" or intended to be used" in the course or furtherance of his business. The applicant submits that primarily the demo car is being purchased in order to provide test drive facility to the customers basically the demonstration facility are used for making the customers understand the look and features of the vehicle and for providing trial drives to the customers which becomes an instrumental factor in the decision-making process of the customer

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during the procurement of vehicles. Such a facility is vital to promote sale of such vehicles of the applicant.

Further it states that demo vehicles for test drive essentially purchased for furtherance of sales advancement etc., for rationalization of existing and future sale of cars and bring in stability, which can be further treated as 'furtherance of business. Therefore, the applicant claims that such vehicle are being used in the course or furtherance of the applicant's business and this, the input tax credit shall be available on procurement of the said demonstration vehicles as per the provision of Section 16(1).

2. Input Tax Credit on inward supply of motor vehicles used for demonstration purpose by the applicant is not restricted in terms of section 17(5) of the CGST Act.

The applicant claims that the input tax credit on inward supply of motor vehicles used for demonstration purpose by the applicant is not restricted in terms of section 17(5) of the CGST Act. In support of this argument applicant places on record its interpretation of section 17(5) by submitting that as per section 17(5) of the CGST Act, input tax credit is not eligible in respect of the motor vehicles for transportation of persons (having seating capacity of less than or equal to 13 persons, including the driver) whereas in the present case the demo cars are not used for transportation of person but are used for providing demo which further helps in decision making to customers.

It further claims that even if the such demo cars are used for transportation of persons, however they get covered under exceptions as carved out in Section 17(5) a which provides that ITC shall be in case there is further supply of such motor vehicles. As per the interpretation of the taxpayer intention of the law, as it appears from the expression, 'for further supply of such vehicles' is to allow input tax credit in respect of taxpayers dealing with motor vehicles as they arranged in further supply of such motor vehicles. The Expression, 'such' bears a wide connotation which does not put any restriction in respect of supply of demo vehicles.

The applicant further states that when the applicant makes purchases of the demo vehicles, such purchases are also meant for further supply, the applicant capitalizes the demo vehicles and has to keep such vehicle for a specific period of time. Such activities, in any manner, do not change the purpose of further supply. Hence the input tax credit on the same is not restricted under Section 17(5)(a) of the CGST Act.

3. Without prejudice, as per meaning of the expression 'for' and its interpretation, makes ITC on demo cars as eligible.

Further the applicant elaborates on terms "for transportation of passengers", Section 17(5)(a) provides that Input Tax credit shall not be available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) except when are used for making 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

Thus, the applicant gives interpretation as denial of ITC of Motor vehicles is only with respect 'for transportation of passengers having seating capacity of not more than 13 passengers. Whereas the impugned Motor vehicle (Demo car) is not for transportation of passengers but is for test drive in order to ensure further sale of Motor vehicles. In support of this contention applicant relies on the judgement of Hon'ble Supreme Court in Indian Chamber of Commerce v. CIT – 1976 (1) SCC 324.

PERSONAL HEARING

Shri Nitin Vijaivercia, Shri Adarsh Shettye, Dr T. Y. Thok (C.A), Shri M. D. Bhandary, Sr. G.M and Shri Dattaprasad Shankhawalkar, Asstt. G.M, duly authorized representative appeared for personal hearing on 27/02/2023 before this authority and reiterated the points deliberated in written submissions made along with application.

FINDINGS AND DISCUSSIONS

In view of the foregoing discussion, we rule as follows:

Relevant Provisions of law

(19) "capital goods" means goods, the value of which is capitalised 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;

(17) "business" includes -

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(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;

(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;

(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;

(63) "input tax credit" means the credit of input tax;

"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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

.....

.....

(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 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the ⁶[thirtieth day of November] following the end of financial year to which such invoice or ⁷[****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

....."

Section 17. Apportionment of credit and blocked credits.-

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

.....

.....

(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:-

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2[(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;

(aa)

....."

Discussion and findings

The applicant has sought the advance ruling on following question.

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.

We have gone through the submissions/arguments, judgements and advance ruling produced/ made by the applicant. Having gone through the applications and submissions of the applicant we note that the contentions of the taxpayer are acceptable to the extent that the demo car used for demonstration of cars look, features, performance, test drive etc. is to be treated as goods used in the furtherance of business. Since the Taxpayer capitalises the demo car in its books of account it is a capital a good used in furtherance of business. But we notice certain difference in the interpretation of the applicant with respect to section 17(5) of GST law.

Firstly, applicant claims that as per section 17(5) Input tax credit is not eligible in respect of the motor vehicles for transportation of persons (having seating capacity of less than or equal to 13 persons, including the driver) and whereas in the present case the demo cars are not used for transportation of person but are used for providing demo which further helps in decision making to customers. Further, the applicant gives interpretation, as denial of ITC of Motor vehicles is only with respect 'for transportation of passengers having seating capacity of not more than 13 passengers and whereas demo car is not for transportation of passengers but is for test drive in order to ensure further sale of Motor vehicles. In support of this contention

applicant relies on the judgement of Hon'ble Supreme Court in Indian Chamber of Commerce v. CIT -- 1976 (1) SCC 324.

In this reference we note that the expression 'motor vehicle for transportation of persons' should be understood as motor vehicle for the purpose of transportation of the passenger, however the nature of use or the purpose for which goods are put to use cannot be decided by the user of the product but it is understood from the commentaries of the Manufacture or in the general parlance in which it is widely put to use.

In the present case applicant is the user of the car manufactured for the purpose of transportation of passengers and used by final consumers for transportation of passenger. Therefore, the interpretation of the applicant cannot be accepted.

The applicant has also relied upon on following advance ruling in support of its claim for eligibility of ITC on demo cars.

- a) M/s Chowgule Industries Private Limited, Maharashtra AAR, TS-1239-AAR-2019-NT
- b) M/s A M Motors, Kerala AAR, (KER/10/2018), TS-542-AAR-2018-NT
- c) M/s Titania Products Private Limited, JHR/AAR/2020-21/01/07.

We find that in following advance ruling the AAR have negatively answered the advance ruling and have ruled that ITC on demo car shall not be allowed

- a) M/S. KHATWANI SALES AND SERVICES LLP - 2020 - Authority for Advance Ruling, Madhya Pradesh
- b) M/S. PLATINUM MOTO CORP LLP - 2019 - Appellate Authority for Advance Ruling, Haryana
- c) M/s BMW INDIA PVT. LTD. • 2022 (3) TM' 487 • Appellate Authority for Advance Ruling, Haryana

Thus we note that in the matter of allowing the ITC on demo car divergent view given by AAR authorities across the country.

Secondly, the applicant further claims that even if the demo car are used for transportation of persons, they get covered under exceptions as carved out in

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Section 17(5)(a) which according to it provides that ITC shall be allowed in case there is further supply of such motor vehicles.

From the reading of expression section 17(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"* it is clear that unless the conditions laid in the section 17(5)(a) are fulfilled the ITC on motor car cannot be claimed. Therefore, the question before the authority is that whether demo car sold after certain period amounts to "further supply"?

The business model of the applicant delineates that the demo vehicles are initially kept by the applicant for a certain period of time as mandated by the car manufacturing company for providing test drive facility to the prospective buyers. The applicant, after receipt of the demo vehicles, capitalizes the same in his books of accounts in lieu of booking the same as stock-in-trade. "Capital goods" in terms of clause (19) of section 2 of the GST Act means "goods, the value of which is capitalised in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business". However, it is important note that mere capitalisation of asset does not render it ineligible for ITC.

In our opinion the expression 'further supply of such motor vehicle' in section 17(5)(a) indicates that ITC shall be available in respect of motor vehicles used for making further supply of such vehicles or transportation of passengers or imparting training on driving such motor vehicles. The subsequent sale of demo car after one/two years on which depreciation is charged and sold for lower price than it was procured cannot be termed as further supply. Generally, such sale of capital asset is sale of used/second hand goods. Thus, we find that demo car capitalised in books is maintained by the applicant for furtherance of business (to be used in business) and not for further supply. Generally, in accounting if goods are to further supplied they need to be accounted as stock. Therefore, by capitalising the demo car the applicant doesn't satisfy the exception given under 17(5)(a)(A).

In view of above finding and discussion we find that the demo motor vehicles used for demo/ test drives are not covered under the exceptions mentioned in clause (A), (B) and (C) to section 17(5)(a).

RULING

ADVANCE RULING UNDER SECTION 98 OF THE CGST/ GGST ACT, 2017.

The ruling so sought by the applicant is accordingly answered as under: -

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 capitalising the motor car it is treated as asset for use in the business and therefore such motor car cannot be said to held for further supply.

(Basant Kumar)
Member

(Sarita S. Gadgil)
Member

Dated: 4 /04/2023
Place: - Panaji – Goa

To,

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

Copy to:

1. The State Tax Officer, Mapusa Ward, Mapusa-Goa.
2. The Dy. Commissioner of State Tax, Mapusa Ward, Mapusa-Goa.
3. The Commissioner of State GST, Panaji – Goa.
4. The Commissioner of Central GST, Panaji – Goa.
5. Office file.
6. Guard file.

