

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AAHFN3084A1ZQ
Name and address of the applicant	M/s. Narsingh Transport, Industrial Area, Maksi road Ujjain(M.P.)
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	d) admissibility of input tax credit of tax paid or deemed to have been paid;
Present on behalf of applicant	Shree Krishnkant Singh, Manager
Case Number	25/2018
Order dated	18.02.19
Order Number	02/2019

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSGT Act respectively) by M/s. Narsingh Transport, Indore (hereinafter referred to as the Applicant) , registered under the Goods & Services Tax.



2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 The Applicant is registered with the Department having GSTIN **23AAHFN3084A1ZQ** for providing "Goods Transport Agency Service" it is availing option to pay tax @12% and availing ITC facility on vehicle and their spares used for providing GTA service as well as on inward services namely insurance of vehicles and repair and maintenance of vehicles. The applicant has recently purchased cars and has provided them to various companies on lease rent under a Lease Agreement entered between them on monthly basis for their use in furtherance of their business. The applicant while purchasing the cars for their business purpose i.e. for providing to other companies on a monthly lease rent under a lease agreement has paid GST as applicable.

4. QUESTIONS RAISED BEFORE THE AUTHORITY :-

The following questions have been posted before the Authority:-

1. The applicant desire the advance ruling on the subject that whether the GST paid on these cars provided to their different customers on lease rent will be available to it as INPUT TAX CREDIT(ITC) in terms of Section 17(5) of Central Goods and Service Tax Act, 2017.

5. DEAPRTMENT'S VIEW POINT:

The concerned officer of SGST gave following view on the issue –

The applicant is entitled to avail ITC on vehicles which are further supplied to customers on lease rent, subject to condition applicable as per section 17(5) of CGST Act, 2017, Madhya Pradesh Goods and Services Tax Act, 2017 and notification number 11/2017 central tax (Rate) dated 28 June, 2017 , State notification No. F-A-3-32-2017-1-V(41) dated 29 June, 2017 read with amendments.

Such vehicle must be registered for Commercial use and Permit holder as per section 66 under Motor Vehicle Act, 1988.

6. RECORD OF PERSONAL HEARING:

6.1 Shree Krishnkant Singh, Manager of the applicant for personal hearing the submissions already made in the application. The Applicant states that

6.2.1 The applicant is providing " Goods Transport Agency Services" and is charging GST on outward supply of goods transport agency service @ 12 %.



6.2.2 The inward supply of the goods and services on which full ITC is being claimed by the applicant is as under :

- (i) Maintenance & Repair service Bills- Maintenance & repairing service is being used for smooth running of vehicles meant for providing GTA service.
- (ii) Spare & accessories Bills - Goods purchased for maintenance of vehicles.

6.3. Statement containing the applicant's interpretation of law and / or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on which the advance ruling is sought).

As per Section 16(1) of CGST Act, 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 of furtherance of his business and the said amount shall be credit to the electronic credit ledger of such person.

The availability / non-availability of input tax credit is governed by Section 17(5) of Central

Goods & Service Tax Act.2017. Section 17(5) envisages the conditions for input tax credit on motor vehicles under the said section.

Section 17(5) of Central Goods & Service Tax Act.2017 provides that input tax credit in respect of the following shall not be available.

- (a) Motor vehicle 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;
- (b) the following supply of goods or services or both-
 - (i) Foods and beverages.....or mixed supply.
 - (ii) Membership of club, health and fitness centre.
 - (iii) Rent-a-cab,.....
- (c) work contract.....supply of work contract services.
- (d) Goods or services.....of furtherance of business.
- (e) goods or services.....



(f) goods or services-----

(g) goods or services or both used for personal consumption.

One of the eligibility is "motor vehicle used for making a taxable supply namely". Further supply of such vehicle or conveyance; or". Following the above in its true letter and spirit the applicant who has purchased cars after paying GST for the purpose of renting (under monthly lease agreement between applicant & their customers) out for further use in furtherance of their business is correctly entitled for input tax credit of GST paid by applicant.

- (i) The applicant is a registered service provider under GST Act.
- (ii) The motor vehicles (cars) purchased have suffered GST at applicable rate.
- (iii) The applicant will not claim depreciation on these vehicles under Income Tax Act.1961
- (iv) The vehicles purchased are further supplied for making a taxable supply / service namely lease rent supply / lease rent service for furtherance of their business.

6.4. Hence, the conditions prescribed under Section 17(5) (a) (i) (A) applicable to its case are fully satisfied making them entitled for credit.

7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing. We find that the issue raised in the Application is squarely covered under Section 97(2)(d) of the CGST Act 2017 being a matter related to 'admissibility of input tax credit paid or deemed to have been paid', and the applicant has complied with the all the requirements for filing this application as laid down under the law. We therefore admit the application for consideration on merits.

7.2 We find that the Applicant is basically registered with GSTN for providing 'Goods Transport Service' and admittedly discharging GST liability on such services @12% Adv. availing input tax credit (hereinafter referred to as ITC). The Applicant has recently purchased cars and the same have been provided to various Companies on lease rent under a lease agreement. The applicant has expressly purchased such cars for furtherance of their business i.e. for providing to other entities on a monthly lease rent under proper lease agreement.

7.3 The applicant has made this application seeking ruling on a limited question, 'Whether the GST paid on these cars provided to different customers on lease rent will be available to the applicant as Input Tax Credit in terms of Section 17(5) of the Central Goods and Services Act 2017.'

7.4 The whole issue revolves here around the "Input Tax Credit" issue so at the very first instance we find it suitable to draw attention towards the provisions relating to Input Tax Credit under GST regime having an impact on the issue raised and to be answered, which read as under :-



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.

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, namely :—

1. After GST Act amendment 2018 –

- (a) motor vehicle for transportation of person having approved seating capacity of not more than thirteen person(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 vehicle;

(aa).....

2. Before the above amendment

- (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;

7.5 A plain reading of the above referred relevant portion of the Sections make it absolutely clear that in respect of motor vehicles, except in certain circumstances, the Input Tax Credit is not available. These exceptional situations are enumerated in the Sub Section 5(a) after the amendment and sub section 5(a)(i) and (ii) before the amendment . In the present case before us is that the Applicant is providing cars on Lease Rent to their customers for carrying passengers and hence not covered by the exception as provided in clause (B) and (C) of sub section 5(a) after the amendment and in clause (B) and (C) of sub section5(a)(i) before the amendment as well as in Sub section 5 (a) (ii) of Section 17 before the amendment. The sub section 5 (a) (i) reads as "for making following taxable supplies namely" and sub section 5(a)(A) after the amendment /5(a)(i) (A) before the amendment, reads as "further supply of such vehicles or conveyances".

7.6 The words "taxable supply" & "further supply" finding a place in the said sub-sections are of great importance here and therefore we find it necessary to draw the attention towards their literal and legal meanings in the GST regime. The term

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"supply" has been categorically defined under Section 7(1)(a) of the CGST Act 2017 which reads as under-

Section 7. Scope of Supply :- (1) For the purpose of this Act, the expression "supply" includes –

(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

7.7 Thus the term 'Supply' is wide in its import and includes all forms of supply of goods and / or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Similarly a "taxable supply" means a supply of goods and / or services which is chargeable to goods and service Tax under the GST Act.

7.8 It is pertinent to mention here that the taxable event under GST is the supply of goods and / or services made for consideration in the course or furtherance of business. In order to constitute a supply "the essential elements required to be satisfied are in the nature of (i) supply of goods and / or services, (ii) supply for a consideration, (3) supply made in the course or furtherance of business (iv) supply made in taxable territory, (v) supply a taxable supply and (vi) supply made by a taxable person. Now on applying the principals laid down by the law, as highlighted above, to the facts of the instant case as also reflecting in the Lease Agreement entered between the Applicant and its customer, we find that –

- (i) Applicant is supplying goods i.e. cars and services i.e. lease rent services,
- (ii) the supplies are against a monthly monetary consideration
- (iii) the supplies are in the course of applicant's business
- (iv) the supplies are effected in taxable territory
- (v) supplies are taxable in nature and
- (vi) Applicant is registered under GST Act

Thus we find that the activities carried out by the applicant are in the nature of "taxable Supply".

7.9 Now we come to the moot question to be answered in the issue at hand. Whether this "taxable supply" made by Applicant satisfies the exception situation provided in subsection 5(a) (i) (A) before the amendment and subsection 5(a)(A) after the amendment to make it eligible for availment of Input Tax Credit on Motor vehicle i.e. cars, purchased and then provided to their customers under Lease Rent Agreement? The above mentioned sub section mentions about making of "further supply" of such vehicles or conveyance and hence the deciding factor would be the term "further supply". We observe that the term "further supply" has not been defined in the Act, therefore one has to go by definition of "supply" which is the very plinth of GST law. The term 'further' prefixed to 'supply' is merely in the form of adverb and does not differentiate it from 'Supply' by any stretch of imagination.

7.10 In the light of the facts as discussed in details in previous paras, the activities carried by the Applicant regarding supply of tax paid motor vehicles on monthly lease rent plus Goods & Service Tax as applicable to their customer under a proper



agreement properly satisfies the conditions laid down under Section 17(5) (a) (i) (A) before the amendment and under subsection 5(a)(A) after the amendment to make it eligible for availment of input tax credit on motor vehicle for the Tax paid by it while acquiring the said vehicles.

- 7.11 We also find it necessary to mention here that the cars, which the applicant intends to lease, or has already leased, should be registered with the transport authority in the capacity of commercial use. In case the vehicle is owned and used by the Applicant for his own use, the facility of ITC shall cease to be available to them.

RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

1. The Applicant is entitled to avail ITC on cars (passenger vehicles) which are further supplied to customers on lease rent, subject to condition applicable in such supply of services as per notification number 11/2017-Central Tax(Rate) Dated 28.06.17 as amended from time to time and corresponding notifications issued under MPGST Act.
2. The provision of rule 42 shall also be applicable if required so.
3. At the termination of lease agreement/contract, if the vehicle is not further leased to same or other customer, the applicant shall be liable to reverse the ITC so availed as per law.
4. Such vehicles should abide by the norms and regulations of The Motor Vehicle Act. in accordance to be registered for commercial use with the Transport authority and not put to own use by the Applicant.
5. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

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RAJIV AGRAWAL
(MEMBER)

No. 26/2018/A-R/R-28/04

Copy to:-

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore

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MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt 18/02/2019



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4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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