



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2018-19/04


(In Application No. 3/2018-19, dated 16.04.2018)

Name & Address of the Applicant	: YKK India Private Limited, Plot No.699, Sector-2, Plot No.122, Sector-6, HSIIDC Growth Centre Bawal, Distt. Rewari, (Haryana)
GSTIN of the Applicant	: 06AAACY0201G1ZZ
Date of Application	: 16.04.18
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (IV) Admissibility of Input Tax Credit of tax paid on any goods or services or both
Date of Personal Hearing	: 10.07.2018
Present for the Applicant	: Sh Kishore Kunal, Advocate

1. M/s YKK India Private Limited (hereinafter referred to as the "applicant") is engaged in the business of supply of slide fasteners, chains, sliders etc. ('Zipper' or 'Final Product'). In furtherance to its business of supply of the said Final Products mentioned above, the Applicant uses various goods as well as services for which the applicable tax under the CGST Act or the relevant State Act or Union Territory Acts under GST regime or Integrated Goods and Services Tax Act, 2017 are paid to the supplier, which fall within the meaning and definition of input tax defined under Section 2(62) of the Act.

2. The Applicant has its unit at Plot No. 699, Sector 2, HSIIDC Growth Centre, Bawal, Distt-Rewari, Haryana and Plot No.122, Sector 6, HSIIDC Growth Centre, Bawal, Distt-Rewari, Haryana ('Factories') where the employees of the Applicant are engaged in manufacturing the Final Products. Further, apart from employees manufacturing Final Products, various managerial service employees also carry out their day to day affairs from the said Factories. The said Factories of the Applicant are situated at remote location in Haryana where public transport is very minimal which hinders transportation of employees to reach the Factories.

3. Accordingly, in order to carry out its business of supply of its Final Product and for efficient functioning of its business as a whole, the Applicant has engaged various contractual service provider who provide transportation services and ensure that employees of the Applicant are able to reach the factories in time for doing their day to day work as scheduled. It is in this regard that the Applicant enters into contract with the said suppliers for hiring buses as well as cars. In this regard, reference is made to sample contract entered between Deep Travels ('Contractor') and the Applicant, both situated in Haryana, for provision of Transportation Services (also referred to as 'Transportation Services') to its employees from various locations to Factories. The Applicant has summarised the relevant terms of the sample agreement below for ease of reference:


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- a. The Contractor shall provide transport Services to employees of the Applicant from Factories to Kakarwali, Rewari by way of a buses
- b. The Contractor shall deploy trained personnel viz. driver and helper buses to provide transportation Services to employees of the Applicant from Factories to Kakarwali, Rewari. The said driver and helper shall be employee of the Contractor and remain under supervision and control of the Contractor.
- c. The Applicant shall *inter-alia* pay a monthly fees of Rs. 1,48,000/- and applicable tax to the Contractor for provision of Input Service.
- d. The Contractor shall provide point to point Transportation Services to employees of the Applicant by ensuring that driver only take routes approved by the Applicant. Any alteration in the transportation Services by the Applicant shall require that Applicant gives prior information to Contractor about the alteration.

4. In furtherance of the aforesaid Agreement, the Contractor raised invoices on the Petitioner on the basis of usage i.e. running of the buses or cars or monthly payments for specified routes of such buses or cars, as the case may be. The said invoices are raised on the Applicant along with applicable goods and service tax (hereinafter referred to as 'GST') which comprises Central GST and Haryana GST by classifying the activities under HSN 996413 viz. Non-scheduled local bus and coach charter services, attracting GST at the rate of 18%.

5. In view of the fact that the aforementioned GST payment on the invoices raised by the Contractor falls within the meaning of input tax credit under Section 2(63) read with 2(62) of the Act, the Applicant is of the view that the Applicant is eligible to take credit of the GST paid subject to fulfillment of the conditions specified in Chapter V of the Act which deals with input tax credit.


6. Questions on which ruling has been sought by the applicant, are as under:-

- i. Whether the Applicant is eligible to take input tax credit on:
 - a. GST charged by the Contractor for hiring of buses for transportation of employees?
 - b. GST charged by the Contractor for hiring of cars for transportation of employees?
- ii. Whether the restriction on 'Rent a Cab' service specified in Section 17(5)(b)(iii) is applicable to input tax credit on:-
 - a. GST charged by the Contractor for hiring of buses for transportation of employees?
 - b. GST charged by the Contractor for hiring of cars for transportation of employees?

RECORDS OF PERSONAL HEARING – 2ND PROVISOS TO SECTION 98(2) OF CGST/HGST ACT, 2017

7. Opportunity for personal hearing was granted to the applicant on 20.06.2018. The party sought adjournment through post. The second personal hearing was held on 10.07.2018, which was attended by Sh Kishore Kunal, Advocate, on behalf of the

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applicant. He reiterated the submissions made in their application. He further explained that as they do not take control of the vehicles themselves and that the vehicles remain with the contractor all the time, the services obtained by the applicant do not fall under "rent a cab " services , but under tariff head 996413 i.e." Non scheduled Local bus and coach charter service "@ 18%. They are therefore, eligible to avail ITC on the GST paid for such services.

After detailed hearing the application was admitted as the questions raised by the applicant are covered under section 97 (2) (d) of the CGST/HGST Act, 2017. As regard merits the decision was reserved which is being released today.

DISCUSSIONS AND FINDINGS OF THE AUTHORITY

8. We have carefully gone through the application for advance ruling and submissions made by the applicant. The applicant is registered taxpayer and has entered into agreement for hiring commercially licensed vehicles for transportation of their employees. The question raised by the applicant is whether they are eligible to avail input tax credit of GST paid by the contractor on the services rendered by them to the applicant.

9. As per Section 16 of the of the CGST/HGST Act, 2017, every registered person shall, 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. However, on this availment of input tax credit (ITC), there are exceptions prescribed under Section 17(5) of the CGST/HGST Act, 2017, which provides that:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a).....

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

(c).....

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10. The point which merits examination here is that whether the impugned services are covered by the definition of "rent-a-cab" and hence ineligible for ITC. In this regard, it is observed that the phrase "rent-a-cab" has not been defined in the CGST/HGST Act, 2017. In situations where statutory meaning of any term/phrase has not been provided words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances, as has been held by the Hon'ble High Court of Allahabad in the case of Godrej Consumer Products Limited Vs. Commissioner of Commercial Tax [2018 (13) G.S.T.L. 135 (All.)]. Hence, we first proceed to examine as to what is rent-a-cab.

11. As per information available on website <https://en.wikipedia.org/wiki/Cab>, Cab means

Cab or **CAB** may refer to:

Transport[[edit](#)]

- [Cab \(locomotive\)](#), the driving compartment of a locomotive
- [Cab car](#)
- [Cabin \(truck\)](#), an enclosed space in a truck where the driver is seated
- [Cabriolet \(carriage\)](#) (obsolete), a type of horse-drawn carriage
- [Causeway Bay Station](#), Hong Kong; MTR station code CAB
- [Civil Aeronautics Board](#)
- [Constructions Aéronautiques du Béarn](#), former French aircraft manufacturer
- Controller anti-lock brake, see [Anti-lock braking system](#)
- NATO reporting name for the [Lisunov Li-2](#) aircraft
- [Taxicab](#), a type of vehicle for hire with a driver
- [Tractor unit](#) of an articulated lorry, known in Britain as an artic cab

As per Oxford dictionary, "Cab" means:

1 A taxi.

2 The driver's compartment in a lorry, bus, or train.

As per Merriam-webster dictionary, "cab" means

1: a light closed carriage pulled by a horse

2: a vehicle that carries paying passengers : [TAXICAB](#)

3: the covered compartment for the engineer and the controls of a locomotive or for the operator of a truck, tractor, or crane


As per Cambridge dictionary, <https://dictionary.cambridge.org/dictionary/english/cab>,

a [taxi](#) (= [car](#) with a [driver](#) whom you [pay](#) to take you where you [want](#) to go)

the [separate part](#) at the [front](#) of some [vehicles](#) in which the [driver sits](#):

From all the above definitions, it emerges that in common parlance, cab refers to a vehicle which has been taken on hire/rent, along with driver, for going from one place to another.

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12. When it comes to Goods and Services Tax, tax on services finds its genesis from Chapter V of the Finance Act, 1994, i.e., the Service Tax statute. Therefore, the definitions relating to "rent-a-cab" as occurring in the Finance Act, 1994, shall also have bearing on what is meant by "rent-a-cab" in common commercial parlance when it comes to understanding the same for the purpose of taxing statutes.

- As per Section 65(105)(o) – 'taxable service' means any service provided or to be provided "to any person, by a 'rent-a-cab scheme operator' in relation to the renting of a cab."

- Section 65(91) – "rent-a-cab" operator means any person engaged in the business of renting of cabs."

- Section 65(20) – "Cab means –

(i) a motorcab, or

(ii) a maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward:

13. From the above, it emerges that where any commercial vehicle is hired for transportation of passengers, it would be squarely covered by the phrase "rent-a-cab". In other words, any person who provides motor vehicle designed to carry 'passengers', on rent, would be included. This also implies that it includes renting of motor cars, motor cabs, maxi cabs, mini buses, buses and all other motor vehicles which are designed to carry passengers, irrespective of their capacity to carry passengers. The contentions of the applicant that hiring of buses which can carry large number of passengers would not qualify under "rent-a-cab" is found to be untenable and the activity of the contractor in the instant case, providing buses or cars on hire to the applicant, is specifically covered under the meaning of "rent-a-cab", which makes the impugned supply as ineligible for ITC in terms of Section 17(5) of the CGST/HGST Act, 2017.

14. In the Case of Commissioner of Service Tax Vs. Vijay Travels [2014 (36) S.T.R. 513 (Guj.)], the Hon'ble High Court of Gujarat, observed as under:

Words and Phrases - Rent - It means the act of payment for the use of something - Renting means a usually fixed periodical return, especially, an agreed sum paid at fixed intervals by a person for any use of the property or car - It is also the amount paid by a hirer to the owner for the use of the property or a car - On facts, Legislature not having made distinction between renting and hiring for levy of Service Tax, Rent-a-Cab Scheme Operator liable therefor - Sections 65(91), 65(105)(o), 68 and 73(1) of Finance Act, 1994 - Sections 74 and 75 of Motor Vehicles Act, 1988 - Section 35G of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. [paras 14.2, 14.3]

Therefore, the contentions of the applicant that due to different in the phrases "hire" and "rent", in their case the impugned would not qualify as "rent-a-cab", have no grounds, as the proposition pronounced in the above cited case law clearly points out that "hiring" and "renting" are synonyms.

15. In view of above, it clearly stands established that the services of the Contractor for hiring of buses/cars for transportation of employees qualify as "rent-a-cab" services. Further, it is also observed that nothing has been brought on record to suggest that the impugned service is not a service which is obligatory for an employer to provide to its employees under any law for the time being in force; or that such inward supply of services is being used by the applicant for making an outward taxable supply of the same category of services or as part of a taxable composite or mixed supply.

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Accordingly, the applicant is not eligible for input tax credit of GST charged by the Contractor for hiring of buses/cars for transportation of employees.

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

- 16.1.** The applicant is not eligible to take input tax credit on:
- GST charged by the Contractor for hiring of buses for transportation of employees.
 - GST charged by the Contractor for hiring of cars for transportation of employees?
- 16.2.** The restriction on 'Rent a Cab' service specified in Section 17(5)(b)(iii) is applicable to input tax credit on:-
- GST charged by the Contractor for hiring of buses for transportation of employees.
 - GST charged by the Contractor for hiring of cars for transportation of employees.

Decided accordingly.
To be communicated.


(Sangeeta Karmakar)
MEMBER


(Vijay Kumar Singh)
MEMBER

Dated 11.07.2018.

Regd. AD/Speed Post

M/s YKK India Private Limited, Plot No.699, Sector-2,
Plot No.122, Sector-6, HSIIDC Growth Centre Bawal,
Distt. Rewari, (Haryana)

Copy to:

- The Deputy Excise and Taxation Commissioner (ST), Rewari.
- The Assistant Commissioner, Central Tax Division, Rewari.