

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD270120030844I
GSTIN Number, if any/ User-id	27AAHFD7761L1ZX
Legal Name of Applicant	DECCAN WHEELS
Registered Address/Address provided while obtaining user id	FLAT NO A2, SHIVSAGAR CO-OP HSG SOCIETY, GROUND FLOOR, SHIVAJINAGAR, PUNE- 411016.
Details of application	GST-ARA, Application No. 103 Dated 04.02.2020
Concerned officer	Division III, Commissionerate PUNE-II
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Retail Business
B Description (in brief)	Applicant is engaged in dealing of second hand cars under the name "Deccan Wheels" and are registered under the GST Act.
Issue/s on which advance ruling required	iv) Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 103/2019-20/B- 81

Mumbai, dt. 25.10.2021

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. DECCAN WHEEL, the applicant, seeking an advance ruling in respect of the following questions.

1. How to calculate margin on sale of second hand goods? Whether

A) Margin = Sales price – Purchase price OR

B) Margin = Sales price – (Purchase price + Processing cost)

For ex: We purchased a second hand car for Rs 10, 00,000/-. Incurred minor processing cost of Rs 50,000/- and sold the car for Rs 12, 00,000/-.

In this case whether margin will be Rs 2,00,000/- (12,00,000-10,00,000) or Rs 1,50,000/- (12,00,000-[10,00,000 + 50,000])?

If B is correct we cannot claim Input Tax Credit on processing cost incurred but if A is correct can we claim Input Tax Credit on processing cost incurred?

2) Whether tax is to be calculated on margin or the margin is inclusive of tax?

For ex: We purchased a second hand car for Rs 10, 00,000/- and sold it for Rs 12, 00,000/-. The margin is Rs 2, 00,000/-. In this case whether tax amount will be Rs 36,000/- (2, 00,000*18%) or it will be Rs 30,508/- (2, 00,000*18%/118%)?

3) Input Tax Credit

Can we claim Input Tax Credit on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc.?

4) If in F.Y. 2019-20 our total margin on sale of second hand goods is below Rs 1.5 crores and total sale value of second hand goods is above Rs 1.5 crores can we opt for composition scheme for F.Y. 2020-21 as in F.Y. 2019-20 our total margin will be less than Rs 1.5 crores.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

- 2.1 Applicant purchases second hand cars (goods) and after minor processing on it such as change of tyres, change of battery, painting, denting, repairs, servicing, internal cleaning, polishing etc, which does not change the nature of the goods, the said goods are sold. Applicant does not claim Input tax credit on purchase of second hand goods and has opted for Margin Scheme and applies GST rate as per Notification No 8/2018- Central Tax (Rate) dt 25/01/2018.
- 2.2 Margin on sale of second hand goods is as under:-

MARGIN = Sales price – (Purchase price + Processing cost)

Applicant cannot claim Input Tax Credit on second hand goods purchased and on processing cost incurred.

- 2.3 Margin is inclusive of tax.
- 2.4 Applicant can claim Input Tax Credit on indirect expenses incurred, such as rent, commission, professional fees, telephone etc. for the purpose of business.
- 2.5 If the total margin for F.Y. 2019-20 is below Rs 1.5 crores whether applicant can opt for composition scheme for F.Y. 2020-21 even if the total sales value exceeds Rs 1.5 crores during F.Y. 2019-20

03. CONTENTION – AS PER THE CONCERNED OFFICER:

Officer Submission (via email) on 13.01.2021 –

- 3.1 **Answer to Q. 1. :-**As per Rule 32(5) of the CGST Rules, 2017, where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price

In view of it Margin = Sales Price-Purchase Price

As the applicant has admitted that they are paying tax as per Notfn No. 8/2018, ITC cannot be claimed on processing cost incurred

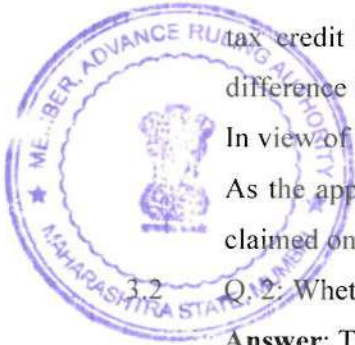
- 3.2 Q. 2: Whether tax is to be calculated on margin or the margin is inclusive of tax?

Answer: Tax is to be calculated on Margin

- 3.3 Q. 3) Can applicant claim Input Tax Credit on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc.?

Answer: - Notification No. 8/2018 restricts the availment of ITC of any taxes paid on such goods therefore apparently, ITC can be claimed on other indirect expenses incurred for the purpose of business strictly as per Section 16 and 17 of CGST ACT 2017.

- 3.4 Answer to Q No. 4:- As per section 15 of the CGST Act, value of supply shall be transaction value (i.e. selling price).The Rule 32(5) of the CGST Rules only provides the amount on which tax is to be discharged. Thus, for the purpose of aggregate turnover selling price is to be considered and if it is more than 1.5 crores the applicant cannot opt for composition scheme.



04. HEARING

- 4.1 Preliminary e-hearing in the matter was held on 04.02.2021. Shri. Arun Joshi, CA, the Authorized representative of applicant was present and made submissions in support of admission of the subject application. Jurisdictional Officer Smt. Firdaus Pagarkar, Assistant Commissioner of CGST, Division-I, Pune-2 was also present.
- 4.2 The application was admitted and called for final e-hearing on 12.10.2021. Shri Shubham Sarada, CA, appeared and made oral submissions. Jurisdictional Officer was absent. The authorized representative informed that the applicant was withdrawing Question Nos. 1, 2 and 4 and requested the authority to decide Question No. 3 on the basis of whatever details were available on record.
- 4.3 We heard both the sides.

05. DISCUSSIONS AND FINDINGS:

- 5.1 We have gone through the facts of the matter, documents on record and submissions both oral and written, made by the applicant as well as the jurisdictional officer.
- 5.2 The applicant, during the course of the final hearing held on 12.10.2021 desired to withdraw Question Nos. 1, 2 and 4 and the same has been accepted by us.
- 5.3 Therefore, the only question before us is whether the applicant can claim Input Tax Credit on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc.
- 5.4 The applicant has submitted that for its transactions (buying and selling of second hand cars), it applies GST rate as per Notification No 8/2018- Central Tax (Rate) dated 25/01/2018.
- 5.5 The said notification is reproduced as under:-

Notification No. 8/2018 -Central Tax (Rate) New Delhi, the 25th January, 2018 G.S.R. (E).-

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the central tax on intra-state supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as are given in corresponding entry in column (2), from so much tax as specified in Schedule IV of Notification No. 1/2017 - Central Tax (Rate), as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4), of the said Table, on the value that represent margin of the supplier, on supply of such goods

Sr. No.	Chap Heading, Sub-Heading or Tariff Item	Description of Goods	Rate
1	8703	Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more. Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%
2	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%
3	8703	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above.	9%
4	87	All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3	6



Explanation –For the purposes of this notification, - (i) in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961 (43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and (ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

2. This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.

5.6 From a reading of the said notification it is seen that **the concessional rate under the notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017,**

CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods. In other words, since the applicant has been availing the benefit of the said notification and paying GST at a concessional rate, they shall not avail Input Tax Credit, as queried.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

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

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- How to calculate margin on sale of second hand goods? Whether

A) Margin = Sales price – Purchase price

OR

B) Margin = Sales price – (Purchase price + Processing cost)

If B is correct we cannot claim Input Tax Credit on processing cost incurred but if A is correct can we claim Input Tax Credit on processing cost incurred?

Answer:- **Withdrawn by the applicant.**

Question 2:- Whether tax is to be calculated on margin or the margin is inclusive of tax?

Answer:- **Withdrawn by the applicant.**

Question 3:- Can we claim Input Tax Credit on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc.?

Answer:- **Answered in the negative.**

Question 4:- If in F.Y. 2019-20 our total margin on sale of second hand goods is below Rs 1.5 crores and total sale value of second hand goods is above Rs 1.5 crores can we opt for composition scheme for F.Y. 2020-21 as in F.Y. 2019-20 our total margin will be less than Rs 1.5 crores.

Answer:- **Withdrawn by the applicant.**

PLACE - Mumbai

DATE - 25.10.2021



**RAJIV MAGOO
(MEMBER)**

**T.R. RAMNANI
(MEMBER)**

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

