

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING IN  
GOODS AND SERVICES TAX, IN THE STATE OF HARYANA,  
PANCHKULA**

**Appeal Case No.: HAR/AAAR/2019-20/03**

**Dated: 28.06.2021**

GSTIN of the Applicant	06AASFP2852PIZG
Name	<b>M/s Platinum Motocorp LLP,</b>
Address/Registered Address provided while obtaining user ID	M/s Platinum Motocorp LLP, Plot No. 282 Sector 06, Industrial Estate, IMT Manesar, Haryana.
Present for the Applicant	<b>Sh. Deepak Juneja, Advocate</b>

**Order under Section 101 of Central Goods and Services Tax Act,  
2017 /Haryana Good and Services Tax Act, 2017**

The present appeal has been filed under Section 100(1) of Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act/HGST Act, respectively) by M/s Platinum Motocorp LLP, Manesar (hereinafter referred to as the "Appellant") against the Advance Ruling No. HAR/HAAR/R/2018-19/40 dated 01.03.2019.

A copy of order dated 01.03.2019 of the Advance Ruling Authority was received by the appellant on 13.09.2019 and the appeal has been filed on 11.10.2019 which is within time.

**BRIEF FACTS OF THE CASE:**

The Facts of the case, as available from 'Facts and Issues of Ruling' in the Appeal submitted vide FORM 'GST ARA-02' by M/s Platinum Motocorp LLP, are that the Applicant is registered in GST at Gurugram as a Central Government (CBIC – Central Board of Indirect Taxes & Customs) administered taxpayer and is an authorised Dealer of Maruti Suzuki India Limited.

The Applicant purchases 'Demo Cars' for demonstration purpose along with the purchases of vehicles for further supply. Each Demo car is used for demonstration for a maximum period of 2 years from the date of purchase after which it can be sold as the second-hand car.

The Appellant maintains that GST is paid on taxable value as per Section 18(6) of the CGST Act 2017 viz.

“(6) In case of supply of capital goods or plant and machinery. on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher”

Appellant submits that after use of the Demo Cars for demonstration purposes before the prospective buyers for a specific period these are sold off, on payment of GST. From the above it is clear that, such vehicles are capitalized in the book of accounts and when sold, the GST is paid on the transacted value.

**QUESTIONS on which Advance Ruling was requested by the Appellant:**

*"Whether Input Tax Credit (ITC) can be availed on such Capital Goods (demo cars) and set off against output tax payable under GST."*

*"Whether Input Tax Credit (ITC) can be availed on ancillary input services such as insurance and repair and maintenance availed in respect of demo cars."*

**RULING by Advance Ruling Authority (AAR):**

The Advance Ruling Authority (AAR) gave following Rulings on the above-mentioned Questions:

**"RULING:**

***So in the light of above discussion the Ruling of the Authority on the questions raised in the application is as under:***

***"The Goods and Services Tax paid on the purchase of demo vehicles cannot be availed as Input Tax Credit and set off against output tax payable under the GST.***

***No Input Tax Credit can be availed on the ancillary Input Services such as Insurance and Repair & Maintenance in respect of above-mentioned vehicles."***

In the Discussion & Findings portion of the Order, the Advance Ruling Authority had found/ noted the following:

*"A close scrutiny of Section 17(5)(a) reveals that the term supply has been prefixed by the word 'further' and due weightage should be given to the prefix. In essence the term 'further supply' connotes resale which is not the purpose of the applicant behind purchasing demo cars."*

...

*The demo vehicles are not used for the purposes specified under Section 17(5)(a) i.e. for making taxable supplies, including further supply of such motor vehicles and are, therefore, not covered under exception provided under Section 17(5)(ab)(i).*

*These demo cars are also not covered under exception mentioned under Section 17(5)(ab)(ii)."*

**GROUND'S of APPEAL:**

In their support, the applicant submitted the following as GROUND'S OF APPEAL:

- The Appellant's contention is that the Input Tax on demo cars should be allowed to the appellant as the same is used only for furtherance of business. That as per the business trends these days, it is indispensable to have a demo car for a car dealer, so as to let the potential customers of the car to have a feel of car features and comforts;
- The demo car is capitalised in the book of accounts; the capital goods which are used in the course of furtherance of the business are eligible for availing ITC and utilizing the same while discharging the output tax liability;
- The Appellant falls under sub-clause A of Section 17(5)(a) i.e. Input Tax is allowed in case of motor vehicles purchased for further supply. The Appellant also purchases demo cars for furtherance of business and after use as demo cars for 2 years the same is sold in market and applicable GST is paid on that;
- Appellant's contention is supported by an Advance Ruling dated 26.09.2018 issued by Kerala Authority for Advance Ruling wherein the Authority has held that the negative clause is not applicable;
- That, vehicles were always intended to be further supply by the Appellant after specified use; No time limit has been prescribed under CGST Act for further supply of vehicles.

**RECORDS OF PERSONAL HEARING:**

The personal hearing in the case was conducted on 24.03.2021. Sh. Deepak Juneja, Advocate appeared before the Members of the Appellate Authority for Advance Ruling and emphasized on the submissions already made in the Appeal and no new point was added.

**DISCUSSIONS AND FINDINGS:**

As per the Statement of Facts submitted as a part of the Appeal, the Goods in question are Motor Vehicles purchased by the Appellant along side other cars meant for sale, but first used as Demo Cars for maximum 2 years.

From the *Questions* for which Advance Ruling was applied and the present appeal has been filed, the issue for determination presently is admissibility of Input Tax Credit (ITC) on the Appellants' motor vehicles which they sell after limited period use as demo cars.

ITC is admissible generally on all the goods which fall under the definition of Inputs. Inputs have been defined under the CGST Act 2017 in Section 2(59) as,

*“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business”.*

The Capital Goods have been defined under the Act in Section 2(19) as,

*“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”.*

The Appellant for his first contention to allow ITC as Capital Goods has submitted that they are capitalizing the Motor Vehicles subjected to the mentioned usage. Thus, apparently ITC should be admissible on these vehicles, as ‘*capital goods*’.

Section 16 of CGST Act provides that a recipient Taxpayer is entitled to take the ITC if it has in possession of the duly issued invoices and the goods or services have been received and are intended for furtherance of business.

As discussed above certain restriction have been imposed on ITC availment in respect of the goods and services in Section 17(5). One such restriction expressly mentioned under Section 17(5)(g) viz., “(g) goods or services or both used for personal consumption.” It can be inferred that sub-Section 17(5)(g) restricts ITC on the Motor Vehicles as these are potential items of personal/non-business use.

However, to arrive at the actual legislative intent i.e. whether the exclusion of said motor vehicles is absolute or purely purpose based, the relevant Sub-section may be read which forbids ITC on several goods and services.

Section 17(5)(a) disallows availment of ITC in respect of vehicles with seating capacity of up to 13 persons *except* when used for the purposes mentioned in respective clauses :

*“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:—*

*(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;*

*(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):*

*Provided that the input tax credit in respect of such services shall be available—*

*(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*

*(ii) where received by a taxable person engaged—*

*(I) in the manufacture of such motor vehicles, vessels or aircraft; or*

*(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]*

As may be seen, a plain reading of this Sub-section indicates the legislative intent clearly that when used for other than the intended purposes, the ITC cannot be allowed on the Motor Vehicles of seating capacity up to 13 persons. The intended purposes are also limited i.e. numbered only three, viz.:

- **further supply of such motor vehicles;** or
- *transportation of passengers;* or
- *imparting training on driving* such motor vehicles.

As mentioned supra, the Demo Vehicles in respect of which the Question about admissibility of ITC has been raised for Advance Ruling, have been used, have been used for the purpose of demonstration before the prospective customers. Then they are sold like second hand goods. The law provides for ITC in case of "further Supply" of said vehicles . But here, first the vehicles are purchased, then they are diverted and used for Demonstration of 2 years or so, and in the first demonstration run it loses the character of the new vehicle and demo vehicles is sold akin to second hand goods and which is different from new Vehicle and accordingly treated differently under GST law. Thus it cannot be said that the demo vehicle is for '*further supply* of such motor vehicles'. This very restricted and specific provision has been provided in law for Motor Vehicles. The purpose and intent of the law is thus very clear. Thus by allowing the ITC this way will be ultra vires the basic provisions of '*further supply* of such motor vehicles'.

If the contentions of the applicant is allowed then in that case all the motor vehicles, irrespective of the nature of Supply will be eligible for ITC across the industries. It will no longer be a restricted clause for Car Dealers , but will be an open-clause for all the trade and industry to avail the ITC on all the Vehicles purchased by them.

We find that use to which the Demo Vehicles are put to, does not fit into the uses which find mention in sub-Section 17(5). The vehicles under question are not meant for '*further supply* of such motor vehicles', but are first put to the mentioned uses. These are disposed of after prolonged use, which may even not restrict to 2 years as mentioned by the Appellant.


As regards to the Applicant's alternative contention that the ITC may be allowed as Input, we have observed that in the very first demonstration run demo car loses the character of the new motor vehicle

and demo vehicles is sold akin to second hand goods and which is different from new Vehicle and accordingly treated differently under GST law, so the demo car is not an input.

So it appears that the Demo Vehicles received by the Appellant have never been received with the intent to simply 'further supply/ sell' as such. Input Tax Credit on these vehicles, thus, cannot be allowed.

On the same rationale, under Section 17(5)(ab), the credit of the input services of repair/ insurance/ maintenance used in respect of said vehicles with seating capacity up to 13 passengers, cannot be allowed.

We therefore upheld the order passed by Advance Ruling Authority.

  
(Shekhar Vidyarthi)  
Member (SGST)

  
(Suresh Kishnani)  
Member (CGST)

Regd. AD/ Speed Post

**M/s Platinum Motocorp LLP,**

Plot No. 282,

Setor 06, Industrial Estate,

IMT Manesar, Haryana.

**Copy to:**

1. The Commissioner of Central Goods & Services Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Assistant Commissioner, CGST, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Gurugram (West).