

**THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE
RULING**

**OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**

BEFORE THE BENCH OF

(1) Shri V.K. SAXENA, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/05/2020

DATE...20.11.20

Name and address of the appellant	M/S .Khatwani Sales And Services LLP 1121/2, PANDIT BHAWANI PRASAD TIWARI COLONY ward no. 32 JABALPUR Madhya Pradesh PIN 482001
GSTIN or User ID	23AAUFGK1834E1ZE
Order of AAR under Appeal before AAAR	13/2020 dated 23.07.2020

PROCEEDINGS

**(Under section 101 of the Central Goods and Services Tax Act, 2017
and the Madhya Pradesh Goods and Services Tax Act, 2017)**

1. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by M/S Khatwani. Sales and Services LLP (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling bearing No. 13/2020 dated 23.07.2020.
2. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.

BRIEF FACTS OF THE CASE

The appellant- M/s Khatwani Sales and Services LLP is registered with GSTIN No. 23AAUFGK1834E1ZE and is an authorised dealer for Kia Motors Corporation for supply of motor vehicles, spares and servicing in Jabalpur, Madhya Pradesh.

QUESTION RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)

Question raised before AAR, are as under: -

Whether the applicant is entitled to avail input tax credit charged on inward supply of Motor Vehicles which are used for demonstration purpose in the course of business of supply of motor vehicles as input tax credit on capital goods and whether the same can be utilised for the payment of output tax payable under this Act?

RULING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)

It is Ruled that the applicant is not eligible for input tax credit on Demo Vehicles purchased for the furtherance of business, in view of barring provisions of clause (a) of subsection (5) of section 17 of GST Act, 2017 as they are not covered by any of the exception given in clause A, B or C of section 17(5) (a).

QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

The following question, which is the very same as posed before AAR, has been posed before the Appellate Authority: -

Whether input tax credit on the motor vehicle purchased for demo purpose can be availed.

STATEMENTS OF FACT

Detailed Discussion about Section 17

Section 17:- Apportionment of Credit & blocked Credits

This section specifies that where goods and 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 if the input tax as is attributable to the purposes of his business.

Contention behind the language of section is that the registered person should not be allowed to take the input tax credit of the goods and services which are not related to business

Section 17 (5) states that notwithstanding anything contained in subsection (1) of section 16 & subsection (1) of section 18 , input tax credit shall not be available in respect of the following namely:-

- a) Motor Vehicles and other conveyance's except when they are used:-
 - i) For Making the following taxable supplies, namely: -
 - A) Further supply of such vehicles or conveyance or
 - B) Transportation of Passengers or
 - C) Imparting training on driving, flying, navigating such vehicles or conveyances
 - ii) For Transportation of Goods
- b) i) Supply of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance and health insurance except where when 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) Travel benefits extended to employees on vacation such as leave or home travel concession;
- c) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

- e) Goods or services or both on which tax has been paid under section 10 i.e. Composition Scheme
- f) Goods or services or both received by a non-resident taxable person except on goods imported by him;
- g) Goods or services or both used for personal consumption;
- h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;
- i) Any tax paid in accordance with the provisions of sections 74 (Tax not / short paid due to fraud etc), 129 (Detention, seizure and release of goods and conveyance in transit) and 130 (confiscation of goods or conveyance and levy of penalty).

Detailed Analysis of Section 17 (5) Block Credit:-

Interpretation of Statutes

The natural presumption of the section is that to block the input tax credit of the goods and services or both of the items which are commonly used as **personal goods and services** like wise motor vehicles, food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance and health insurance, membership of a club, health and fitness centre, Travel benefits extended to employees on vacation such as leave, Works contract service, Construction Services, Personal Consumptions of goods and services, Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Coverage of the above items clearly indicates that the block in credit is for the items which commonly used for the personal and business both.

Here Motor Vehicle used as Demo Vehicle is entirely used for business purpose and no question of the same for being used as personal vehicle shall arise.

Here Applicant contended that they are covered in all the exception Provision of section 17 (5) a clauses (i) (A) (B) (C) in the following manner

Section 17(5) (a) (i):- **EXCEPTIONS WHEN INPUT CREDIT ALLOWED**

Exception Clauses	Applicant Contentions for fall in exception
A) Further Supply of such vehicles or conveyances	Here Demo Vehicle used in the course of business to increase the sale and to further supply of such vehicle or conveyance which ultimately increase the GST revenue for the government
B) Transportation of Passengers	Today in the era of Competition every customers services at their foot is very important. Our Firm Provide the To and fro facility to easily reach at the showroom which is located at outer area (Approx 11 Kms) from the city centres point to the prospective buyer of the vehicles . Also many of the Customers has to kept the vehicle at the service point at that point of time our Demo Vehicles only used to drop our customers at their specific locations.
C) Imparting training on driving, flying, navigating such vehicles or conveyance	Here main purpose of the Demo vehicle is to provide the training about the features of the vehicle which is in the course of business.

Hence credit on demo cars does not fall within the restrictions placed under Section 17(5) on blocking credit on motor vehicles but is instead squarely covered by exceptions mentioned therein, being 17(5)(a)(A) and (C).

Here Following points should also be considered

- 1) According to applicant Demo vehicle purchased is in the course of carrying out his business, the appellant is mandatory required to keep demo vehicles of each model as per their dealership agreement of the KIA Motors Corporation and since the models keep changing at a fast pace due to competition in the market, it marks as a regular business feature for the appellant.

2) Further, the appellant purchases Demo Vehicle from Kia Motors Corporation against tax invoice after paying tax and capitalizes the same in his books of accounts and has not charged depreciation on the tax component.

3) The demo vehicles are used for limited time period and replaced earlier of following:

A) 40000 kms or above

B) Continuation of model

and then sold at Written Down Value after paying applicable taxes.

GROUND OF APPEAL

Ground 1: Motor vehicles in the nature of demo cars should not be hit by the provisions of blocked credit u/s 17(5) of the CGST Act

According to Section 2(19) of GST Act, *“every registered person shall be entitled to take input tax credit charged on supply of goods or services or both which are used or intended to be used in the course or furtherance of his business.”*

Further, as per Section 2(19) of CGST Act, 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 term **“In furtherance of business”** is not defined in the Act, but in common parlance would cover any supplies made in connection with the business which helps in increasing the sales or profitability. In the present case, Demo Cars are capital goods as they are imperative to the business of selling cars, especially when a new brand (like that of the appellant) is introduced to the consumer market. **It is indisputable that:**

A) The demo cars help in furtherance of business by exhibiting the features of the car and giving first-hand experience through test drives to the customer thereby increasing the sales.

B) The demo cars are used in imparting training on driving of cars which may be technically and functionally very different from the ones prevailing in the market.

Hence credit on demo cars does not fall within the restrictions placed under Section 17(5) on blocking credit on motor vehicles but is instead squarely covered by exceptions mentioned therein, being 17(5)(a)(A) and (C).

Ground 2: Cascading effect of tax and Increased cost

If input tax credit is not allowed then the principle aim of CGST Act of removing cascading effect of tax will be defeated, rendering the provisions of GST infructuous.

Further, the appellant will be pushed towards higher cost and will be placed at a relatively disadvantageous position compared to other applicants who applied for AAR and got a favorable ruling, thus affecting the appellant's business severely.

Ground 3:- GST Act does not prescribe the time within which supply should be done

Section 17(5) (a) the input tax credit shall not be available on motor vehicles except when they are used for making further supply of such motor vehicles.

The further supply of such demo vehicles are made after one or two years and constitutes a taxable supply and GST is paid thereon. As GST Act does not prescribe the time within which further supply should be done. Hence, the impugned tax credit should be available

Reliance is placed on Advance Ruling

- 1) AAR No. GOA/GAAR/07 of 2018-19/4796 dated 26/03/19 by Goa Authority: - input tax credit on the motor vehicle purchased for demonstration purpose can be availed as input tax credit on capital goods and set off against the output tax payable under GST

- 2) AAR No. KER/10/2018 dated 26/09/18 by Kerala Authority:- Authority held that the input tax paid by a vehicle dealer on the purchase of motor car used for demonstration purpose of the customer can be availed as input tax credit on capital goods and whether the same can be utilised for the payment of output tax payable under this Act
- 3) AAR No. GST-ARA-18/2019-20/B-121 dated 26/12/19 by Maharashtra Authority Whether the applicant is entitled to avail 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 Vehicles as input tax credit on capital goods and whether the same can be utilised for the payment of output tax payable under this Act :- **Answer is Affirmative**

PERSONAL HEARING

The appellant was called for personal hearing on 12.10.2020 and was deferred for 29.10.2020. On 29.10.2020 the appellant was heard through Shri Deepak Asrani, Chartered Accountant. After hearing the appellant has expressed his satisfaction through a letter and asked for decision.

DISCUSSION AND FINDINGS

1. We have carefully gone through the submissions made by the appellant in his appeal application as well as the submission made at the time of personal hearing.
2. In his submission appellant has stated that he is an authorised dealer of passenger cars doing business of purchase and sale of cars at Jabalpur, Madhya Pradesh. He is also making sales of spares and rendering services of repair and maintenance. Appellant has explained that vehicles are mandatorily purchased by him as per dealership agreement with supplier of cars. Vehicles are purchased against tax invoice, after paying input tax and the purchase is capitalised in the books. These demo vehicles are used for a limited time period or say for running up to 40,000 km and are then sold at written down value. GST is paid on the supply value of these vehicles.
3. Appellant has argued his case by raising multiple points. The first point put forward is that he uses these vehicles for enhancing sales by demonstration,

transportation of customers to and fro from city and educate & train the customers. According to him this activity is in the course and furtherance of business. It is true and correct that he is thus entitled to take credit. This is entitlement only. It is not granting him credit. Section 17 (5) starts with non-obstante clause. Thus despite being entitled he may not get credit if he does not adhere to the conditions stipulated there.

4. Appellant in his second point, has stated that he has capitalised this purchase in the books and as per mandate of section 16 (3), he is not charging depreciation on the tax component under Income Tax Act. Hence, he is not barred from claiming input tax credit. There is nothing noteworthy here as it is a condition precedent under section 16 (3).
5. In his third point appellant has cited AAR rulings from other States and has said that if he does not get a favourable ruling he will get placed at a disadvantageous position in comparison to other applicants.
6. His fourth point claims that in the GST Act it is not mandatory to make outward supply of goods within a particular time. All that is needed is that sale should be after the event of purchase has taken place. His sale after two or more years from the date of purchase does not debar him from claiming input tax credit. AAR has held that a sale of Demo vehicle after one or two years cannot be said that the Demo Vehicle is for further supply. AAR has also held at page 5 para number 7.3 that sale in the subsequent year of Demo Vehicle on which depreciation has been charged is to be treated as a sale of used / second-hand vehicle and not a sale of a new vehicle.
7. The primary intention of appellant to purchase demo vehicles is to use it for demonstration and trial for the customers. He has, as per his statement, capitalised these purchases of demo vehicles in his books of account and these demo vehicles are used and replaced earlier of following (a) 40,000 kms or above (b) continuation of model. It means that these vehicles have very specific object to serve and after that, these are subsequently supplied by way of sale as old, used and second hand vehicle. It is worthy to mention here that there is no question of cascading effect since the issue is already clear in light of notification no. 8 /2018 central tax (rate) dated 25/01/2018, Explanation no. (i) of this notification stated that, "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”.

8. After close examination of the ruling of Madhya Pradesh Advance Ruling Authority and representation of appellant, we find that the ruling given by the Madhya Pradesh Advance Ruling Authority is reasonable and appropriate. Section 17(5) (a) prescribes the condition in which input tax credit shall not be available on 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:-

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;

We draw the conclusion that the demo vehicles used for demonstration and for offering trial facility to customers, are not covered in above exceptions.

ORDER

We agree with the ruling of Madhya Pradesh Authority for Advance Ruling and in our opinion Appellant is not entitled to avail input tax credit on inward supply of motor vehicles which are used for demonstration purpose as such vehicles do not qualify the exceptions given in clause (A),(B) and (C) of section 17(5)(a) of GST Act, 2017.



V.K. Saxena
(Member)

Madhya Pradesh Appellate Authority

No. 05/2020/A.A.A.R./37.



Raghwendra Kumar Singh
(Member)

Madhya Pradesh Appellate Authority

Indore, dated - 20.11.2020

Copy to:-

1. The Appellant
2. The AAR, Madhya pradesh
3. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. The Commissioner, CGST and Central excise, Indore
6. The Jurisdictional officer State/ Central
7. The web Manager, www.gstcouncil.gov.in
8. Office Copy