
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Smt. Gayathri P.G., IRS &
: Shri. Abdul Latheef K.

Legal Name of the applicant	M/s. SAI SERVICE PRIVATE LIMITED
GSTIN	32AABCS4998M1ZS
ARN No.	AD3212220071991
Address	50/1115 L, Cheranelloor Road, Edappally, Ernakulam, Kerala, 682024.
Advance Ruling sought for	1. Whether the applicant is entitled to avail the Input Tax Credit on inward supply of motor vehicles which are used for demonstration purpose in the course of business of supply of motor vehicle as input tax credit on capital goods.
Date of Personal Hearing	20/12/2023
Authorized Representative	Harikrishnan K.A., Senior Manager - Accounts. Mr. Nitin Vijaivergia, authorized representative

ADVANCE RULING No.KER/09/2024 Dated 10/01/2024

1. M/s. SAI SERVICE PRIVATE LIMITED, Pune with registered office at 50/1115 L, Cheranelloor Road, Edappally, Ernakulam, Kerala, 682024 (*hereinafter referred to as the applicant*) is in the business of supply of motor cars and services related to the same.

2. In this ruling, a reference to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under



3. The question on which advance ruling is requested is mentioned above.

4. Contentions of the Applicant.

4.1. In the application, they stated, inter alia, that the applicant, as part of their day to day business, requires demo vehicles in the show rooms. Such demo vehicles are used for test drive to potential customers and which is essential to sales promotion. Such vehicles would be used for this purpose for 2 years or 40,000/- KM, whichever is earlier. These vehicles are capitalized in the books of accounts as fixed assets and depreciation is availed on the same under Income Tax Act, but ITC is not availed. After the expiry period of usage, these demo vehicles are disposed as second hand cars to customers. At the time of sale of these cars to customers, such supplies are subject to GST as per Notification No 08/2018 Central Tax (Rate) dated 25-01-2018. The applicant stated that they intent to avail ITC on such cars as detailed above, which are used for demo purpose.

4.2. The applicant's interpretation of the matter is that the inward supply of motor vehicles for demo purpose by the applicant is in the course of furtherance of business and quoted Section 16 (1) and various sub-Sections of Section 2 of the CGST Act, 2017 in support of the claim that they are eligible for ITC in this regard. They substantiated these claims in the light of their business model and the nature of activity to which such cars are put to. Consequently, they argued that they are eligible for ITC in this regard and further, quoted the Judgment of the Hon'ble Supreme Court in 'Commissioner of Income Tax Vs Malayalam Plantations Ltd, Commissioner of Central Excise, Bangalore Vs. Millipore India (P) Ltd., Dwarikesh Sugar Industries, AAR Uttar Pradesh, Essel Propack Ltd Vs Commissioner of GST, Sita Juneja and Associates Vs Commissioner of Sales Tax, etc.

4.3. Secondly, they argued that ITC on inward supply of motor vehicles used for demo purpose is not hit by Section 17 (5) of the CGST Act, 2017, since Section 17 (5) restricts Input Tax Credit on vehicles used for 'transportation of persons' whereas demo cars are used for demonstration of the vehicle to prospective customers. Further, Section 17 (5) does not hit the eligibility for



ITC when the cars are used for further supply of such vehicles and the demo vehicles are also purchased for further supply of such vehicles, since they are sold after the demo period. On these grounds, they claimed that they are eligible for ITC in respect of the purchase of cars used for demo purpose and cited and quoted the decision of AAR, West Bengal in the application made by M/s Toplink Motor Car (P) Ltd and AAR, Maharashtra in Chowgule Industries (P) Ltd etc. They also stated that 'further supply of Motor Vehicles' does not prescribe any time limit within which supply is to be made. GST law also does not bar ITC on goods supplied at a lower price than purchase price.

4.4. Further, quoting the decision of the Supreme Court of India in 'Indian Chamber of Commerce VS CIT', they argued that the usage of the word 'for' specifically connotes the end for which anything is done. Thus, the embargo under Section 17 (5), applies only when used 'for' transportation of person and not when used 'for' demo purpose.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of section 98 (1) of the CGST Act. The Jurisdictional officer has not submitted any remarks and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

6. Personal hearing

The applicant was granted opportunity for personal hearing on 20/12/2023. Mr. Nitin Vijaivergia, authorized representative of the applicant appeared for personal hearing, which was conducted virtually. The representative reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

7. Discussion and conclusion.

7.1. Only one issue is involved in the application, viz., whether the cars used by the applicant for demonstration purpose are eligible for ITC or not. The cars



in question are earmarked for demonstration purpose so that prospective customers can make an informed choice about purchasing the vehicle. Demo cars are thus indispensable for sales promotion since prospective customers prefer to test drive the cars before they make a decision. Hence, we have no dispute that the demo cars are put to use for furtherance of business and clears stipulations envisaged under Section 16 (1) of the CGST Act, 2017 for availing ITC.

However, we find that Section 17 (5) is an overriding provision and is applicable 'Notwithstanding anything contained in sub-section (1) of section 16' and therefore, complying with the conditions under Section 16 (1) alone does not make the applicant eligible for ITC of the demo cars.

7.2. The pivotal question to be decided is whether such ITC is hit by Section 17 (5). As per Section 17 (5), '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;

7.3. Thus, motor cars involved in the question are eligible for ITC only if these conditions are met. Therefore, the argument that demo cars are not used for transportation of persons doesn't make them eligible for ITC. However, we find that the applicant intends to make a further supply of such cars after the demo period. The fact that the cars were used for demo purpose doesn't alienate the cars from its eligibility for ITC, if they are used for making further supply of the same, even if on a later date. Thus, we are of the opinion that the applicant can claim ITC on cars used for demonstration purposes, provided they are subsequently used for making supply.


Given the observations stated above, the following rulings are issued;




RULING

Question 1. Whether the applicant is entitled to avail the Input Tax Credit on inward supply of motor vehicles which are used for demonstration purpose in the course of business of supply of motor vehicle as input tax credit on capital goods.

RULING: Yes, they are entitled to avail Input Tax Credit on inward supply of motor vehicles which are used for demonstration purpose. However, this ruling shall not be applicable if depreciation is claimed on the tax component of the cost of demo cars or if the cars are not used for making further supply of such cars.


Gayathri P.G., IRS
Joint Commissioner of Central Tax
Member


Abdul Latheef. K
Joint Commissioner of State Tax
Member

To,

M/s. SAI SERVICE PRIVATE LIMITED,
50/1115 L, Cheranelloor Road, Edappally,
Ernakulam, Kerala, 682024

Copy submitted to :

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: cccocchin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002. (email: cst.sgst@kerala.gov.in).
3. The Commissioner of Central GST and Central Excise, Cochin Commissionerate.



Copy to :

1. The Additional Commissioner, TPS, HQ, Thiruvananthapuram.
2. The Deputy Commissioner, ITMD, Tvpm for uploading in the website
3. Tax payer services Circle, Kakkanad, Supdt. Central Tax, Kakkanadu
Range-4, Kakkanad Division.

