

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	TOPLINK MOTORCAR PRIVATE LIMITED
Address	Near Reliance Tower, Ground Floor, Salap, Domjur, JL 52 Howrah, Pincode- 711409
GSTIN	19AADCT3123H1ZH
Case Number	04 of 2022
ARN	AD190222004812I
Date of application	March 02, 2022
Order number and date	03/WBAAR/2022-23 dated 30.06.2022
Applicant's representative heard	Mr. Jay Krishna Sharma, Authorised Representative Mr. Mayur Khaitan, Authorised Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is an authorized dealer of Hyundai Motor India Limited for supply of different ranges of motor vehicles and also carries on business activities as an authorized service station. It is submitted by the applicant that he purchases vehicles against tax invoices which are reflected in his books of accounts as capital assets and are used as

demo cars for providing trial run to the customers to make them understand the features of the vehicles.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

- Whether GST liability on sale of vehicle, spares, labour can be done by utilizing the input tax credit on purchase of demo vehicle, other expenses like repairs & maintenance, insurance etc.

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (d) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant is engaged in supplying of different ranges of motor vehicles as an authorized dealer of Hyundai Motor India Limited. The applicant also carries on business of repair and servicing of motor vehicles as an authorized service station. It is submitted by the applicant that in addition to purchases of motor vehicles which are subsequently supplied to customers, he also makes purchases of vehicles which are used as demo cars for providing trial run/demonstration to the customers. Inward supplies of such vehicles which are used for demonstration purposes are made against tax invoices and get reflected in his books of accounts as capital goods.

2.2 The applicant submits that the demo cars are used to show the features of a specific model, to allow test drive facility to the prospective buyers of such vehicles and thus become an essential part of marketing and sales promotion to facilitate the sale of cars. The applicant capitalizes these demo cars in his books of accounts and intends to avail credit of input tax against inward supplies of such demo cars.

2.3 The applicant, in support of his contention, has placed his reliance on the following advance rulings:

- (i) M/s Titania Products Private Limited (Order No. JHR/AAR/2020-21/01 dated 25.08.2020);
- (ii) M/s Titan Motocorp (Order No. JHR/AAR/2020-21/03 dated 22.12.2020);
- (iii) M/s Singhania Future Private Limited (Order No. JHR/AAR/2020-21/04 dated 22.12.2020).

The Advance Ruling Authority of Jharkhand, in respect of all the above-referred cases, has held that the said companies can claim and set off the input tax credit on demo vehicles along with repair, maintenance & insurance under GST for discharging their liability subject to following conditions that:

- the company is required to maintain up to a maximum of one demo vehicle of each model till final disposal of that demo vehicle before acquiring new demo vehicle and it is to be shown in the capital goods account;
- the company will not claim the depreciation on the GST components of Demo vehicle as expenditure u/s 37 of the Income-tax Act;
- the company will create GST Liability upon sales of demo vehicles as per Sec 18(6);
- the company will maintain a separate account of inward and outward supply of Demo vehicles and will produce annual statement along with the Balance sheet and P&L account to the concerned Jurisdictional GST authority.

2.4 The applicant has also relied on the advance ruling pronounced in the matter of Chowgule Industries (P) Ltd (Order No. GST-ARA-18/2019-20/B-121 dated 26.12.2019) wherein the Advance Ruling Authority of Maharashtra has held that input tax credit on motor vehicles purchased for demo purposes can be availed. The said authority has observed that since the applicant will be making further supplies of the demo vehicles and there is no time limit prescribed in the GST Act for making such further supplies, we are of the opinion that they will be eligible to avail ITC in the subject case.

2.5 Further reliance is place by the applicant on the advance ruling given in the matter of M/s A.M. Motors wherein the Advance Ruling Authority of Kerala has held that input tax paid by a vehicle dealer on purchase of a motor car used for demonstration purpose of the customer can be availed as input tax credit on capital goods and set off against output tax payable under GST. The said authority observed that the restriction imposed under Sec 17(5) does not apply on purchases of demo vehicles since the vehicles are sold at the written down book value after a limited period of use as a demo car.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representatives of the applicant during the course of personal hearing. The applicant is an authorised dealer of Hyundai Motor India Limited. The applicant, in the course of his business activities, makes purchases of vehicles which are supplied to the customers. In addition to this, the applicant also makes purchases of vehicles which are used for demonstration/ test drive purposes. The demo vehicles are kept by the applicant only for a limited period of time and are supplied thereafter. The issue involved in the instant case is to determine admissibility of input tax credit on purchases of such demo vehicles.

4.2 In course of personal hearing, the authorised representatives of the applicant have furnished a copy of 'Revised Test Drive Car Policy' wherefrom it appears that the usage time of test drive car (i.e., the demo car) is to be counted for target achievement for 12 months and for an additional period of 45 days from the date of approval by the Hyundai Motor India Limited. It is mandatory for the applicant to keep the test drive car for at least 12 months from the date of approval. The authorised representatives thus submit that the applicant makes supply of the demo car charging tax at applicable rate when the mandatory usage time of test drive is over.

4.3 Section 16 of the GST Act deals with eligibility and conditions for taking input tax credit. Sub-section (1) of section 16 entitles a registered person to take input tax credit on supply of inputs as well as capital goods made to him subject to certain conditions and restrictions which have been prescribed. Sub-section (1) of section 16 reads as follows:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, 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 and the said amount shall be credited to the electronic credit ledger of such person.

4.4 However, sub-section (5) of section 17 of the GST Act overrides sub-section (1) of section 16 and restricts availment of input tax credit under certain scenarios. One of such restriction as specified in clause (a) of sub-section (5) of section 17 limits the scope of input tax credit with respect to motor vehicles. The same is reproduced below for reference:

“(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;”

4.5 In other words, input tax credit on motor vehicles used for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), can be availed only when such motor vehicles are (i) supplied further, or (ii) used for transportation of passengers, or (iii) used for imparting training on driving such motor vehicles.

4.6 In the instant case, the demo vehicles are not used for transportation of passengers by the applicant. We are also of the view that merely providing test drive facility or to demonstrate the features of a vehicle to prospective buyers cannot be regarded as imparting training on driving the vehicle. It therefore appears that the applicant shall be entitled to take input tax credit on demo vehicles only when the condition laid down in section 17(5)(a)(A)

gets satisfied i.e., if it is established that the purchases of such demo vehicles are made for further supply of such vehicle.

4.7 The business model of the applicant delineates that the demo vehicles are initially kept by the applicant for a certain period of time as mandated by the car manufacturing company for providing test drive facility to the prospective buyers. The applicant, after receipt of the demo vehicles, capitalizes the same in his books of accounts in lieu of booking the same as stock-in-trade. 'Capital goods' in terms of clause (19) of section 2 of the GST Act means "goods, the value of which is capitalised in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business". It would not be out of place to mention here that the provisions of the GST Act doesn't restrict to avail input tax credit to the extent of capitalization sans clauses (c) and (d) of sub-section (5) of section 17 of the Act *ibid*. We are, therefore, of the view that input tax credit on purchase of demo vehicles cannot be denied merely on the ground of capitalization of the vehicles in the books of accounts.

4.8 The applicant maintains the stock of the demo vehicles for a specified period of time and thereafter supplies the same, may be at a price lower than the purchase value of the said vehicle. However, the provisions of the GST Act nowhere specifies that input tax credit shall not be available in respect of any outward supplies which is made at a price lower than its procurement value. Further, restriction imposed under section 17(5)(a)(A) shouldn't be applied on the ground that the supplies have been made after a certain period of time since there is no time limit prescribed in this regard for making such further supplies.

4.9 It is submitted by the authorised representatives of the applicant that while making purchases of any particular model of motor vehicles, the vehicle which is purchased for demonstration/test drive purposes is tagged in the Data Management Software (DMS) of Hyundai Motor India Limited. Thus, a demo vehicle is specifically recorded in the system of the company and the applicant cannot supply the demo vehicle till the usage time is over as mandated by the company.

4.10 It needs to be reiterated that section 17(5)(a)(A) restricts input tax credit in respect of motor vehicle for transportation of persons except when they are used for further supply of such motor vehicles. The intention of the law, as it appears from the expression 'for further supply of such vehicles' is to allow input tax credit in respect of taxpayers dealing with motor vehicles as they are engaged in further supply of such motor vehicles. We are of the view that the expression 'such' bears a wide connotation which does not put any restriction in respect of supply of demo vehicles. When the applicant makes purchases of the demo vehicles, such purchases are also meant for further supply. However, as per Dealership Agreement and Test Drive Car Policy, the applicant requires capitalizing the demo vehicles and has to keep such vehicle for a specific period of time. Such activities, in any manner, do not change the purpose of further supply.

4.11 In our considered opinion, the word 'such' as used in the expression 'further supply of such vehicles' relates to the vehicle only that was purchased. It is a fact that the condition of a demo vehicle at the time of its further supply might have undergone some deterioration from the spick and span condition in which it was at the time of its purchase. But that does

not detract from the reality that the vehicle when supplied by a car dealer has ceased to be such vehicle that was purchased.

4.12 The standard business practice of a car dealer is to purchase vehicles including one or more demo vehicles for further supply of such vehicles. While non-demo vehicles are made available for sale immediately after the purchase, the demo vehicles are put up for sale after the demonstration/test drive period. The demo vehicles are purchased all along for further supply with the condition that they will be kept for a specific period of time. We therefore hold that purchase of demo vehicles and further supply of the same satisfies the condition laid down in section 17(5)(a)(A) of the GST Act.

In view of the above discussions, we rule as under:

RULING

The applicant is eligible to avail input tax credit on purchases of demo vehicles which can be set off against output tax payable under GST.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling