

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 Act, 2017)

BENCH

Shri Sydney D'Silva, Joint Commissioner, CGST & CX
Shri Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services 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 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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Nipha Exports Pvt Ltd
Address	48 Ganga Jamuna, Floor No. 3 & 4, 28/1 Shakespeare Sarani, Kolkata 700017
GSTIN	19AAACN9099H1ZV
Case Number	02 of 2019
Date of application	January 17, 2019
ARN	AD1901190004088
Order No. & date	43/WBAAR/2018-19 dated 26/02/2019
Applicant's representative heard	Shri Nikhil Jha, FCA

1. Admissibility of the Application

1.1 The Applicant, stated to be a manufacturer of agricultural machinery, seeks a Ruling on whether input tax credit is admissible on ambulances purchased for the benefit of the employees under legal requirement of the Factories Act, 1948.

1.2 Advance Ruling is admissible under Section 97(2)(d) of the GST Act.

1.3 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.

1.4 The concerned officer from the revenue has raised no objection to the admission of the application.

1.5 The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Application submits that the Applicant has factories in Howrah and Hooghly for manufacturing agricultural machinery and has purchased an ambulance for the benefit of the employees, as required under Section 45(4) of the Factories Act, 1948. The Applicant argues that the input tax paid on inward supply of the ambulance is eligible for credit under the Second Proviso to Section 17(5)(b) of the GST Act, as amended w.e.f. 01/02/2019.

3. Observation & Findings of the Authority

3.1. The Applicant purchased the ambulance on 22/11/2018, as evident from the submitted Invoice No. INV19A001475 dated 22/11/2018 of M/s Supreme & Co Pvt Ltd (GSTIN: 19AACCA7232K1ZK). The amended provisions of the GST Act that the Applicant refers to have come into effect from 01/02/2019 vide Notification No. 2/2019-CT dated 29/01/2019. Section 17(5) of the GST Act, as it stood prior to the amendment, is, therefore, relevant. Eligibility for claiming input tax credit under section 16(1) is subject to the provisions of law at the time of occurrence of the taxable event, irrespective of when the claim is made. Second proviso to section 17(5)(b) of the GST Act, as it stands post amendment effective from 01/02/2019, is not applicable to a transaction made in November 2018.

Section 17(5) of the GST Act, as it stood prior to the amendment, provides:

“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 and other conveyances except when they are used-

(i) for making the following taxable supplies, namely:-

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both:-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an 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) rent-a-cab, life insurance and health insurance except where-

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such 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; and

(iv) 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 and machinery) on his own account including when such goods or services or both are used in course or furtherance of business.

Explanation – For the purpose of clauses (c) and (d), the expression ‘construction’ includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;”

3.2. It is evident from above that input tax credit on inward supply of ambulance, being a motor vehicle, is not admissible under Section 17(5)(a) of the GST Act. The exception carved out under Section 17(5)(b)(iii)(A) of the GST Act for services which are obligatory for an employer to provide to its employees under any law for the time being in force is limited only to rent-a-cab, life insurance and health insurance.

In view of the foregoing, we rule as under.

RULING

Input tax credit is not admissible on the ambulance purchased in November 2018, as Section 17(5) of the GST Act, as it stood in the relevant period, blocks any such enjoyment, even if provisioning of ambulance service to the employees is obligatory under the Factories Act, 1948.

This Ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

Sd-

(SYDNEY D'SILVA)
Member

West Bengal Authority for Advance Ruling

Sd-

(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling