



#GSTCASE-135-ELIGIBILITY OF ITC ON DEMO VEHICLE"-(AAR-MAH)-EQUALLY APPLICABLE FOR OTHER MOTOR VEHICLES??

Posted on June 23, 2020





"Since Demo vehicles would be further supplied in future, and there is no time limit prescribed in GST Act for making such further supplies, applicant held to be eligible to avail ITC on Demo Vehicle"-(AAR-Mah)-Equally Applicable for other Motor Vehicles??"

Case: Chowgule Industries (P.) Ltd., 113 taxmann.com 365 (AAR - MAHARASHTRA)

1. Query:

Whether applicant is entitled to avail and utilize ITC on inward supply of Demo Cars which have been capitalized in books of accounts

2. Facts:

Applicant is authorized dealer for Maruti Suzuki India Limited for supply of motor vehicles and spares and for servicing as also for some other commercial vehicle manufacturers. The Applicant as per the dealership norms has made purchases of demo cars, used for providing trial run to customers to understand features of vehicle, against tax invoice which are reflecting in books of account of Applicant as capital goods.

3. Contention of the Assessee:

As per section 17(5)(a) input tax credit shall not be available on motor vehicles except when they are used for making further supply of such motor vehicles. Further supply of such demo motor vehicle is made after one or two years and constitutes a taxable supply and GST is paid thereon. GST Act does not prescribe the time within which further supply is to be affected. Hence, impugned tax credit is available. This activity does not come under negative clause, as after a limited period of use as demo car, the vehicles are sold at the written down book value. Relied Upon Chowgule Industries (AAR-Kerala) and A.M. Motors, 98 taxmann.com 157/70 GST 484 (AAR - Kerala).

4. Observation by AAR:

a) **Demo Vehicle to be Capitalized in Books of Account:** It was observed by AAR that demo vehicles are capital goods for applicant and will be capitalized and accounted under Fixed Assets of Company excluding GST component. Applicant have/will not claim depreciation on tax component of said demo cars nor will claim such expenses incurred as business expenditure u/s. 37 of Income Tax Act. They are accounting for fixed assets, excluding GST which is accounted as input credit separately. They have also stated that the depreciation is claimed only on cost of car and not on GST.



b) **Eligibility under Section 16 of CGST Act, 2017**-Section 16 does not make any distinction between capital goods and other goods for allowing credit of ITC. Hence, ITC in respect of capital goods, is available and can be taken, since ITC credit for capital goods is in parity with other goods. In applicants line of business, it is of utmost necessity to have vehicles for providing trial run to customers to understand features of vehicle. These vehicles, known as Demo Vehicles are an important and essential requirement for marketing and promoting sale of motor vehicles. Thus, we find that these Demo Vehicles are being used to further their business i.e. sale of motor vehicles and further, purchases of such Demo Vehicles are capitalized in their books of accounts.

c) **Provisions of Section 17(5)(a) does not blocks credit in instant case**-In the subject case, applicant has submitted that every model of demo cars is used by them for demonstration only for a limited period i.e. every two years or 40,000 Kms whichever is earlier and thereafter, the said vehicles are sold after paying the applicable taxes on sale value at that point of time. 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.

d) **Utilization of ITC of Demo Vehicles for discharging Output Tax Liability**-The manner of utilization of ITC is provided as per provisions of Section 49 of the CGST Act. Section 18 of the CGST Act, deals with availability of credit in special circumstances. As per Section 18(6) of the CGST Act, when there is a supply of capital goods on which ITC has been taken, as in the subject case then the applicant shall pay an amount equal to the ITC taken on the said Demo Vehicles reduced by such percentage points as maybe prescribed or the tax on the transaction value of such Demo Vehicles, whichever is higher.

5. Held:

ITC is available for demo car and the same can be utilized for payment of output tax payable under this Act.

6. Comment-

Decision by AAR supports a valid point that since applicant will be making further supplies of Demo vehicles even though capitalized in books of accounts, and there is no time limit prescribed in the GST Act for making such further supplies, applicant was eligible to avail ITC in the subject case. This view cannot be held to beyond the scope of interpretation of law.

Can the same principle be applied in case of motor vehicles purchased by taxpayer for use in their business. **In an earlier article published in July 2017 on our website, similar view was articulated.**



The link of the article is as follows: [Does 17\(5\)\(a\)\(i\) allows ITC only to persons engaged in buying and selling of of motor vehicles -Part II](#)

Few Excerpts of the Article are as under:

Section 17(5) only allows claim for ITC when such motor vehicles are used for making further taxable supply of such vehicles. The key word used here is "further supply" which has been used without any further condition of whether or not such supply of motor vehicle is from stock in hand or capital asset. Thus, if section 7 treats sale of capital assets as "supply", then any motor vehicle sold as capital asset would also be treated as taxable supply on sale of such motor vehicle.

Further, if such would have been the intention that registered person who makes supply of motor vehicle from his stock would only be allowed the credit, then in such case, provisions of section 17(5)(a)(i) would have specifically detailed out that credit would only be allowed on the inputs held in stock just as they have done in section 18 and section 140 for reference.

The provisions of section 17(5)(a)(i) nowhere restricts credit only to motor vehicles sold out of stock in hand. The section only provides that input tax credit of motor vehicle would be available when they are used for making taxable supplies namely further supply of such vehicles. Thus, attaching any other condition linked with usage of the product or supply of vehicle out of stock in hand would be adding language to the law, which has not been provided in the law.

Therefore, when law has treated both sale of motor vehicle out of stock in hand or out of capital asset as supply and section 17(5)(a)(i) also does not makes any specific exclusion out of the two, then in such case, input tax credit on motor vehicle whether capitalized or not should be allowed.