

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

Mr. Sydney D'Silva, Joint Commissioner, CGST & CX
Mr. 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	Mohana Ghosh, carrying on business under the trade name M/s Reesham Associates
Address	E -1/8 Sudakshina Housing Estate, 3ra floor 96, Raja S.C. Mullick Road, Naktala Kolkata 700047
GSTIN	19AMTPG9236D 1ZO
Case Number	WBAAR 09 of 2019 dated 28/0/2019
ARN	AD1903190011892
Date of application	28/03/2019
Order number and date (post rectification)	08/WBAAR/2019-20 dated 25/06/2019
Applicant's representative heard	Sambit Das, Authorized Representative

The advance ruling in this matter was pronounced on 10/06/2019. The order, however, suffers from certain legal errors that are apparent on the face of the record. They need to be rectified. This Authority, therefore, proceeds to amend the said order on its own accord under section 102 of the GST Act. As the rectification is not going to enhance the tax liability or reducing the amount of admissible input tax credit from the original order, the requirement under proviso to section 102 of the GST Act does not apply. The amended order as it stands after rectification is provided below. The amended portion is included under the third bracket.

1. Admissibility of the application

1.1 The Applicant, stated to be supplying cabs on a rental basis, seeks a ruling on whether a credit is admissible of the input tax paid on the purchase of motor vehicles for the supply of the above service.

1.2 The question is admissible for advance ruling under section 97(2)(a) & (d) of the GST Act. The concerned officer from the Revenue submits that question raised in the application is not pending or decided in any proceedings of the GST Act. As such, he does not object to the admissibility of the application. The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that she supplies rent-a-cab service, as defined in the Finance Act, 1994. She refers to section 17(5)(a)(B) of the GST Act that allows credit of input tax paid on the purchase of motor vehicles when used for supplying passenger transportation service. The Applicant submits that people take the car on rent for the transportation of passengers. Rent-a -Cab is, therefore, essentially associated with the transportation of passengers. GST paid on the purchase of motor vehicles for supplying rent-a-cab service should, therefore, be admissible in terms of section 17(5)(a)(B) of the GST Act. She submits photocopies of a few invoices, showing that the invoices are made on the distance travelled.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue submits that the GST Act did not allow credit of GST paid on inputs for supply of rent-a-cab service in terms of section 17(5)(b)(iii) of the Act. However, the provisions of the Act have since been amended. The above restriction is removed with effect from 01/02/2019. Post-amendment, admissibility of input tax paid on the purchase of motor vehicles to be used for supply of rent-a-cab service should, therefore, be examined in terms of section 17(5)(a)(B) of the GST Act. As renting of a cab is made for the sole purpose of transporting passengers, the Applicant is eligible to claim the input tax credit on the purchase of motor vehicles for supplying rent-a-cab service.

4. Observations and findings of the Bench

4.1 [Section 17(5)(b)(iii) of the GST Act did not allow input tax credit on supply of rent-a-cab service, except under certain specific conditions. Post-amendment, effective from 01/02/2019, the restriction continues under section 17(5)(b)(i) of the Act on renting and hiring of motor vehicles. A registered taxpayer cannot, therefore, claim the input tax credit on the GST paid for hiring motor vehicles. The Applicant, however, is a supplier of rent-a-cab service. Section 17(5) of the Act does not restrict the supplier of such services from claiming the input tax credit on her inward supplies except as provided under section 17(5)(a) of the Act.]

4.2 Section 17(5)(a) of the Act provides that input tax credit shall not be available on inward supply of 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) a further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles.

[The above provisions do not allow a registered taxpayer to claim the input tax credit on inward supply of motor vehicles of a specific category (the motor vehicles meant for transportation of persons having seating capacity not exceeding thirteen persons). The restriction, therefore, does not apply to the goods transport vehicles, buses etc. Inward supplies of cabs like the ones the Applicant uses for the supply of rent-a-cab service, however, fall under the ambit of the restriction, unless they are used for the supplies mentioned under section 17(5)(a)(A) to (C) of the Act.] The Applicant argues that rent-a-cab service qualifies to be treated as a supply of passenger transportation service. [Input tax credit on inward supply of motor vehicles used for outward supply of rent-a-cab service should, therefore, according to the Applicant, be admissible under section 17(5)(a)(B) of the GST Act.]

4.3 Passenger transportation service is classified under SAC 9964. Transportation of passengers, with or without accompanied belongings, is taxable under SI No. 8 of Notification No. 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 - FT dated 28/06/2017), as amended from time to time (hereinafter collectively called the Rate Notification). As obvious from reference to the accompanied belongings, the recipient of the service is a passenger travelling from one place to another. He may have varying degrees of control over the carriage, providing him with a certain measure of independence in choosing the destination and travel time, depending upon the nature of the contract, explicit or implied. But the supply remains that of transportation of the recipient as a passenger, and the consideration is paid for the distance travelled.

4.4 Renting of any motor vehicle, however, is classified under SAC 9966. It is taxable under SI No. 10(i) of the Rate Notification. The recipient of this service is not a passenger. He is enjoying the service of having provided a motor vehicle, with or without a driver, for use in whatever way he likes for the duration of the renting period. It may remain parked for the entire duration of renting without actual transportation of any person. Even when any person - the recipient of the service or someone of his choice - is being transported, the consideration is paid not for the distance travelled, but for renting the cab.

4.5 The photocopies of the Applicant's invoices show that the recipients are institutions like West Bengal Postal Circle, who clearly could not travel as a passenger. Furthermore, they are raised for the duration of renting, which is a fixed number of hours in a calendar month.

If the cab is requisitioned on holidays or for extra hours on a working day, an additional amount is charged irrespective of the distance travelled. The recipient has to pay a fixed amount whether or not the cab is moved. If, however, the cab travels beyond a threshold, the rent is calculated as a cost-plus, taking the distance travelled into account. As apparent from SI No. 10(i) of the Rate Notification, the essential character of the service remains the same even when the cost of fuel is included in the consideration charged.

4.6 In para [4.3 and 4.4], this Authority has explored the scope of two relevant SAC: 9964 and 9966. In passenger transportation service (SAC 9964) the recipient of the service is a passenger, and he pays the consideration for the distance travelled, whatever be the degree of control he enjoys over the vehicle. In renting or hiring of a motor vehicle (SAC 9966), the recipient is provided with the right to use the vehicle over a specified duration, whether he is a passenger or not. Distance travelled is taken into consideration to recover the cost of fuel. But travelling a certain distance is not the essence of the service.

4.7 Rent-a-cab is not defined in the GST Act. Nature of the Applicant's service is, therefore, derived from what is stated in the Application and what can be ascertained from the invoices. The Applicant provides cab rental service inter alia to institutions like West Bengal Postal Service. The recipient, as discussed in para 4.6, has to pay the Applicant a certain amount per month as consideration irrespective of what distance the cab travels in a particular month. The additional amount has to be paid if the cab is retained for extra hours or requisitioned on holidays. To cover the cost of fuel, the distance travelled needs to be brought into play, but only if it crosses a certain threshold. It is, therefore, clear from the above discussion that the nature of the service the Applicant provides is classifiable under SAC 9966 as renting of a motor vehicle. The credit of GST paid on the [inward supply] of motor vehicles for the supply of the Applicant's service is not, therefore, admissible in terms of section [17(5)(a)] of the GST Act.

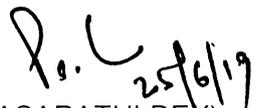
Based on the above discussion, we rule as under:

RULING

GST paid on the [inward supply] of motor vehicles for supplying rent-a-cab service is not admissible for credit in terms of section [17(5)(a)] of the GST Act.

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


(SYDNEY D'SILVA).
Member


(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling

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