	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM
	BEFORE THE AUTHORITY OF: Shri. S. Anilkumar, IRS & : Shri. B.S. Thyagarajababu B.Sc, LL.M

Legal Name of the applicant	M/s. Orix Auto Infrastructure Services Limited
GSTIN	32AAACO2563P1ZA
Address	Corporation No.61/3085 E, Manikkath Road, Ravipuram, Ernakulam - 682016.
Advance Ruling sought for	Eligibility of input tax credit on Compensation Cess paid on the purchase of Motor Vehicles which are used in providing services of transportation of passengers or supply of rental business services and disposed of after three or four years of such use.
Date of Personal Hearing	02.03.2019
Authorized Representative	Sri. S. Thirumalai, Advocate

ADVANCE RULING No. KER/38/2019 Dt.02.03.2019

The petitioner is supplying services of transportation of passengers or renting of Motor Vehicles (internally called as RAC business) with or without chauffeurs and also leasing of vehicles. The petitioner operates the renting and leasing business as separate division. The motor vehicles procured for renting business are exclusively used for the said business and the same are not interchanged with those in respect of leasing business at any point of time until their disposal. The motor vehicles purchased for the above business is capitalized in the books of accounts.

The petitioner requested advance ruling on the eligibility to take credit of the input tax credit as defined in Section 2(g) of the GST (Compensation to

States) Act, 2017 of the cess paid on purchase of motor vehicles used in providing services of transportation of passengers or renting of motor vehicles given the fact that as a matter of business policy, the said motor vehicles would be initially used for supply of RAC services and disposed of after three or four years of such use.

The authorized representative of the applicant is heard. It is pointed out that in leasing business the applicant purchase motor vehicles from vehicle dealers on payment of GST and Compensation Cess. After purchasing such vehicles, the applicant, on operating lease basis, transfer the right to use of such vehicles to his customers. In terms of Clause 5 (f) of Schedule II to the CGST Act, transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration shall be considered as supply of service. The services of transfer of right to use motor vehicles are liable for Compensation Cess under the Compensation Cess Act vide Serial No.1 of Notification No.02/2017 - Compensation Cess (Rate) dated 28th June, 2017. Accordingly, the applicant is discharging GST and Compensation Cess on consideration received for providing the said leasing services of motor vehicles to its customers. Against such liability of GST and Compensation Cess on outward supplies, the applicant utilized ITC of GST and Compensation Cess paid on purchase of motor vehicles which are used for the operating lease business.

In renting business, applicant provides the services of transportation of passengers or renting of motor vehicles to their customers as per the terms and conditions of the agreement. On services provided to customers in this regard, the applicant is discharging GST @ 12% after claiming ITC on GST paid on motor vehicles used for renting business in terms of Notification No.11/2017 Central Tax (Rate) dated 28-06-2017. The renting services are not liable for Compensation Cess under the Compensation Cess Act as per Notification

No.2/2017 - Compensation Cess (Rate) dated 28-06-2017. Accordingly, the applicant is availing ITC of GST component only and not that of Compensation Cess paid at the time of purchase of the Motor Vehicles. This is because at this stage there is no liability of Compensation Cess on the outward supplies of renting services and further Compensation Cess can be utilized only for payment of such Cess in terms of the proviso to Section 11 of the Compensation Cess Act.

In order to provide the superior customer services, the applicant substitute new vehicles once in three to four years. The applicant sells the old vehicles on outright basis to third party customers as part of regular business practice and on such sales, they are paying GST and Compensation Cess.

The CGST Act and Compensation Cess Act are *part-materia* in nature and levy two separate taxes, i.e., GST and Compensation Cess respectively on simultaneous basis on a supply of goods or services or both. Therefore, a particular supply of goods or services or both could be taxable under both the Legislations or could be taxable only under the CGST Act and not under the Compensation Cess Act or vice versa. As per Notification No.2/2017 - Compensation Cess (Rate) dated 28-06-2017, services of transfer of right to use any goods is liable for Compensation Cess, whereas the rental services and passenger transport services are not liable for Compensation Cess as it does not involve transfer of right to use of motor vehicles.

As per Section 2(p) of the Compensation Cess Act "taxable supply" means a *supply of goods or services or both which is chargeable to the cess under this Act*. Therefore leasing supplies are taxable supply for the purpose of Compensation Cess Act and rental business is not regarded as taxable supply for the purpose of Compensation Cess Act as the same is not chargeable to Cess under the said Act.

As per sub-sec.(2) of Sec.2 of the Compensation Cess Act, the words and expressions used and not defined in the Compensation Cess Act but defined in the CGST Act or IGST Act shall have the meanings respectively assigned to them in those Acts. There is no definition of 'exempt supply' under the Compensation Cess Act. Therefore, the same needs to be borrowed from the CGST Act which is as follows:

Section 2(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11, or under Section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Accordingly Compensation Cess is not chargeable on rental service, being an exempted supply. The vehicles used for rental business service are generally sold after three - four years of purchase. Therefore, the sale of vehicles being taxable supply, Compensation Cess will be attracted as the sale is effected within 5 years of such purchases.

As per Sec.11 of the Compensation Cess Act, provisions of the CGST Act and IGST Act and Rules made thereunder including provisions relating to ITC shall *mutantis mutandis* apply in relation to levy and collection of the Cess leviable under the Compensation Cess Act on supply of goods or services or both.

As per Sec.17(2) of the CGST/SGST Act, where the goods or services are used partly for effecting taxable supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of input tax as is attributable to the said taxable supplies. The manner of reversal of ITC in cases wherein capital goods are used for effecting both taxable and exempted

supplies, has been prescribed in Rule 43 of the CGST/SGST Rules, 2017. As per Rule 43 (1) (c), if a capital goods are used for effecting taxable and exempted supplies, the input tax in respect of such capital goods shall be credited to the electronic credit ledger in respect of such goods at the time of purchase. The useful life of such goods is to be considered as 5 years from the date of the invoice for such goods. Accordingly, input tax attributable to a tax period should be calculated by allocation of total input tax availed on such goods over such useful life of 60 months. Therefore, input tax attributed to a tax period shall be reversed every month proportionate to the use for exempted supplies during the said period. The amount so determined shall be added to output tax liability along with applicable interest till the time such vehicles are used for exempted supplies.

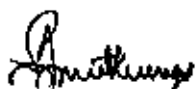
Hence, considering provision envisaged in Sec.17(2) of the CGST Act / SGST Act read with Sec.11 of the Compensation Cess Act, the petitioner is eligible to take ITC of compensation Cess paid on purchase of vehicles used for rental business and subsequently, used for effecting taxable supply by way of sale on such vehicles.

In view of the observations stated above, the following rulings are issued:

Whether the applicant is eligible to take credit of the input tax credit as defined in Sec.2(g) of the GST (Compensation to States) Act, 2017 of the Cess paid on purchase of motor vehicles used in providing services of transportation of passengers or renting of motor vehicles given the fact that as a matter of business policy, the said motor vehicles would be initially used for supply of rental business services and disposed of after three or four years of such use.

Considering the provision envisaged in Rule 43 of GST Rules, applicant is eligible to ITC of entire amount of Compensation Cess paid on the purchase of vehicles used for rental business. Such ITC claimed shall be reversed every

month equally apportioned over the prescribed period of 60 months to the extent of usage of exempted supply of service. As per Rule 43(c) of GST Rules, applicant is eligible to claim ITC of Compensation Cess paid at the time of purchases of Motor Vehicles and need to reverse a proportionate amount of ITC every month based on the turnover of rental service business and utilize balance ITC for discharging liability of Compensation Cess arising at the time of sale of such vehicles.



S. Anilkumar, IRS
Additional Commissioner of Central Tax
MEMBER



B.S. Thyagarajababu, B.Sc, LL.M
Joint Commissioner of State Tax
MEMBER

To

M/s. Orix Auto Infrastructure Services Ltd.
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