
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Shri. Sivaprasad.S, IRS &
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	M/s. EVM Motors & Vehicles India Pvt. Ltd.
GSTIN	32AACCE0045L1Z1
Address	V/127, 128 – Old II-ND 4C ADD, Volkswagen Cochin, NH Bypass, Kannadikadu, Maradu P.O, Ernakulam 682304.
Advance Ruling sought for	<p>1(a) Whether the services rendered by the applicant falls under the Chapter 99, Heading 9964 and Service Code 996415?</p> <p>(b) Whether the rate provided in Notification No.11/2017-Central Tax (Rate) dated 28-06-2017 and Notification No.8/2017- Integrated Tax (Rate) dated 28-06-2017 under heading 9964 and description in point (vii) having a GST rate of 18% is applicable for the service rendered by this applicant?</p> <p>2. Whether the appellant is entitled to claim Input Tax Credit as detailed above.</p>
Date of Personal Hearing	06-01-2021
Authorized Representative	Shri. Stanly James, Chartered Accountant

ADVANCE RULING No. KER/103/2021 Dated 25-05-2021

M/s.EVM Motors and Vehicles India Private Limited (**hereinafter referred to as the applicant**) is a major automobile dealer in the State of Kerala. It handles 15 automobile brands with showrooms and workshops spread all round Kerala. As a part of the diversification plan they have started a new venture “Le Leela” in the Hospitality segment.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (**hereinafter referred to as CGST Act**) and the Kerala State Goods and Services Tax

Act, 2017 (**hereinafter referred to as KSGST Act**) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. Brief facts of the case:

The new venture is a resort, in Muhamma in Alapuzha district. As part of this venture, house boats are being acquired and furnished. These house boats are to be used for cruises, overnight cruises and for day trips. Meals are provided as part of a package. Alcohol provided, if any, is to be billed separately and KGST will be charged. The boarding point may or may not be the point of disembarkation. The boats procured are to be furnished with state-of-the-art bedrooms, dining rooms, halls and kitchens. The rate proposed to be charged by the applicant is an all-inclusive fare for transportation, accommodation, food services and other incidental services.

4. The applicant requested for advance ruling on the following;

1(a) Whether the service rendered by the applicant falls under the Chapter 99, Heading 9964 and Service Code 996415?

(b) Whether the rate provided in Notification No.11/2017-Central Tax (Rate) dated 28-06-2017 and Notification No.8/2017-Integrated Tax (Rate) dated 28-06-2017 under heading 9964 and description in point (vii) having a GST rate of 18% is applicable for the service rendered by this applicant?

2. Whether the applicant is entitled to claim Input Tax Credit as detailed above.

5. Contentions of the Applicant:

5.1. Section 97 (2) of the Central Goods and Services Act, 2017 stipulates the questions on which an advance ruling may be sought. An identical provision is contained in Section 97(2) of the Kerala Goods and Services Tax Act 2017. The advance ruling is sought on the issues relating to clauses of section 97 (2) (a) & (d) relating to issue of classification and input tax credit availability respectively.

5.2. The service of hiring house boat along with rooms and food and beverages (excluding alcohol) at a consolidated rate comes under classification 996415 (Local water transport services of passengers). Reference is made to the Explanatory Notes to

the Scheme of Classification of Services under GST. In Chapter 99 under the Heading 9964 -Passenger transport services, the following classification appears under Heading 996415 - Local water transport services of passengers. The explanation states that this service code includes:

- i. passenger transportation services on rivers or canals and on other inland waters by ferries including hydrofoils and hovercraft whether on a scheduled or non-scheduled basis;
- ii. inland water cruises that include transportation, accommodation, food services and other incidental services in an all-inclusive fare;
- iii. passenger transportation services on rivers, canals and other inland waters on scheduled or non-scheduled basis by vessels other than ferries cruise ships, sightseeing and excursion boats;
- iv. transportation services of accompanying vehicles, luggage, animals and other items;
- v. water taxis.

5.3 Thus the services rendered by them come under the category mentioned in Item (ii) of the Explanatory Note. Therefore the rate applicable for the services rendered by them will be the rate under the category 9964. Thus it is clear from the Notification Nos. 11/ 2017 Central Tax (Rate) dated 28.06.2017 and 08/2017 Integrated Tax (Rate) dated 28.06.2017 that the services of hiring house boats by them falls under heading 9964 and the rate applicable is against the description of service under Sl No. (vii) "Passenger transport services other than (i), (ii), (iii), (iv), (v) and (vi) above having a GST rate of 18%.

5.4. Regarding availability of Input Tax Credit, they will be / has incurred expenses on refurbishing and furnishing the vessel. They are entitled to claim input tax credit as provided by Section 17 of the CGST Act. Further as the services rendered by them are specified under Section 17 (5) (aa) (i) (B) input tax credit is available for expenses incurred by them on refurbishing, furnishing, maintaining and repairing the vessel. The input tax credit on supply of food etc provided in the consolidated price for hire of house boat is also available in view of the provisions in section 17 (5)(b).

6. Contentions of the Jurisdictional Officer:

The classification 996415 is local water transport service of passengers. From the application it is not clear whether the passenger's entrance and exit are at different places or at same place. If at same place, it works as a floating restaurant and not as a passenger transport service.

7. Personal Hearing:

The applicant was granted opportunity for personal hearing on 06.01.2021. The authorised representative of the applicant attended the personal hearing. He reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made by them.

8. Discussion and Conclusion:

8.1. The matter was examined in detail. The issues to be decided are; (1) the classification of the services rendered by the applicant; (2) the rate of tax applicable for the service rendered and (3) the eligibility of the applicant for ITC.

8.2. The applicant is operating a resort at Alapuzha District. In connection with the same, house boats are being acquired and furnished by the applicant. The house boats are used for overnight cruises and day trips. Meals are provided as part of package. If alcohol is provided, it will be billed separately and Kerala General Sales Tax will be charged. The boarding point may or may not be the point of disembarkation. The boats procured are furnished with state- of- the- art bedrooms, dining rooms, halls and kitchens. The rate proposed to be charged by the applicant is an all-inclusive amount for transportation, accommodation, food and other incidental services. The applicant claims that the service is classifiable under SAC 9964 placing reliance on the explanatory notes to Heading 996415 of the Scheme of Classification of Services under GST. The Scheme of Classification of Services is notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017. Chapter 99 – Heading – 9964 pertains to passenger transport services and 996415 pertains to local water transport services of passengers by ferries, cruises and the like. The Explanatory Notes to the Heading 996415 states that the service code includes inland water cruises that include transportation,

accommodation, food and other incidental services in an all-inclusive fare. The services rendered by the applicant as detailed above squarely falls under the Heading 996415 in view of the explanatory note and hence the services are appropriately classifiable under SAC 996415.

8.3. Having come to the conclusion that the services are appropriately classifiable under SAC 996415, the next issue to be decided is the rate of GST applicable on the service. The entry at SI No. 8 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 pertains to the rate of tax applicable for services falling under Heading – 9964 – Passenger transport services. The relevant sub-entry (vii) of SI No. 8 of the said notification reads as follows;

SL No	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
8	Heading 9964 (Passenger transport services)	vii) Passenger transport services other than (i), (ii) (iii), (iv), (iva), (v) and (vi) above.	18	Nil

The services rendered by the applicant that are classifiable under Heading 996415 is covered by the above entry in Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and is accordingly liable to GST at the rate of 18%. [9% - CGST + 9% - SGST]

8.4. The third issue to be decided is regarding the eligibility of the applicant for ITC. Sections 16 to 18 of the CGST Act, 2017 enumerates the circumstances in which ITC is allowed and the conditions, limitations and the procedure subject to which the ITC can be claimed. Section 16 of the CGST Act pertains to eligibility and conditions for taking input tax credit. Sub-sections (1) to (4) of Section 16 prescribes the basic / essential conditions to be satisfied for availing/ taking input tax credit. Sub-section (1) provides that 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 of furtherance of his business and said amount shall be credited to the electronic credit ledger of such person. Section 17 of CGST Act pertains to

apportionment of credit and blocked credits. Sub-section (5) of Section 17 specifies the list of goods and services in respect of which input tax credit is not available except under the situations specified therein. Vessels, food and beverages are included in the list specified in Section 17 (5) and hence input tax credit of tax paid on vessels and in the repair and maintenance of vessels and in respect of food and beverages are not available except when they are used for the purposes specified therein. In order to determine the eligibility of input tax credit in respect of tax paid on the expenses incurred in refurbishing / furnishing the vessel and in respect of the food supplied in the course of the cruise it is necessary to determine whether they are used for providing supplies specified in the exclusion clauses of Section 17 (5) of the CGST Act. The relevant provisions of Section 17 (5) of the CGST Act are reproduced below;

(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;*

(aa) vessels and aircraft except when they are used—

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

- (A) further supply of such vessels or aircraft; or*
- (B) transportation of passengers; or*
- (C) imparting training on navigating such vessels; or*
- (D) imparting training on flying such aircraft;*

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both— (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both 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.

8.5. We have already come to the conclusion that the services rendered by the applicant are classifiable under SAC – 9964 – Passenger transport services and accordingly the applicant is eligible for the input tax credit in respect of the expenses incurred by them on refurbishing, furnishing, maintaining and repairing the vessel as the supplies are used for providing the taxable outward supply of passenger transport services specified in the exclusion clause in Section 17 (5) (aa) (i) (B) of the CGST Act. The applicant is also eligible for input tax credit on the supply of food during the cruise as the supply is an element of the outward taxable supply of passenger transport services and hence covered by the proviso to Section 17 (5) (b) (i) of the CGST Act.

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

RULING

1(a) Whether the service rendered by the applicant falls under the Chapter 99, Heading 9964 and Service Code 996415?

Yes. The services rendered by the applicant are appropriately classifiable under Heading – 9964 – 996415 – Local water transport services of passengers.

(b) Whether the rate provided in Notification No.11/2017-Central Tax (Rate) dated 28-06-2017 and Notification No.8/2017-Integrated Tax (Rate) dated 28-06-2017 under heading 9964 and description in point (vii) having a GST rate of 18% is applicable for the service rendered by this applicant?

Yes. The services rendered by the applicant are liable to GST at the rate of 18% [9% - CGST + 9% - SGST] as per entry at SI No. 8 (vii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and Notification No. 08/2017 Integrated Tax (Rate) dated 28.06.2017.

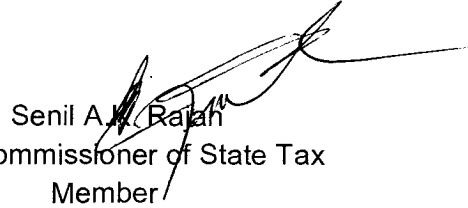
2. Whether the applicant is entitled to claim Input Tax Credit as detailed above.

The applicant is entitled to claim input tax credit subject to the conditions prescribed in Section 16 of the CGST Act, 2017.



Sivaprasad.S

Joint Commissioner of Central Tax
Member



Senil A.K. Rajan

Additional Commissioner of State Tax
Member

To,

M/s. EVM Motors & Vehicles India Pvt. Ltd.
V/127, 128 – Old II-ND 4C ADD,
Volkswagen Cochin, NH Bypass,
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Ernakulam 682304.

Copy to:

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2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Deputy Commissioner of State Tax, Special Circle -3, Ernakulam. [E-mail ID: acspl3ekm1@gmail.com]