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|  | KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM |  |
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BEFORE THE AUTHORITY OF : Smt. Gayathri P.G., IRS &
: Shri. Abdul Latheef. K

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| Legal Name of the applicant | M/s Royaldrive Pre Owned Cars LLP |
| GSTIN | 32AAUFR0385F1Z2 |
| ARN | AD3204230041502 |
| Address | 612-B, C, D New 5/342, 343, 344, TM Building, Machingal, Melmuri, Malappuram-676517 |
| Advance Ruling sought for | <p>1. In view of the Notification No. 8/2018-Central Tax (Rate) dated 25th January 2018, the applicant would like to get clarification as to whether the input tax credit would be available on inward supplies of goods or services which are in the nature of direct expenditures like spare purchases, repairs and refurbishment costs of vehicles, etc., except on purchase of old or used motor vehicles as mentioned in para 2 of the notification.</p> <p>2. In view of the Notification No. 8/2018-Central Tax (Rate) dated 25th January 2018, the applicant would like to get clarification as to whether the input tax credit would be available on inward supplies of other goods or services except on purchase of old or used motor vehicles as mentioned in para 2 of the notification. That is, whether credit of input tax available on inward supplies of goods or</p> |



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| | services like office/ showroom rent, telephone, advertisement, professional charges, capital goods, etc., except that on inward supply of old or used motor vehicles. |
| Date of Personal Hearing | 16/01/2024 |
| Person appeared for hearing | Sri. CA Jamsheed Adam, FCA |

ADVANCE RULING No. KER/13/2024 Dated 14/02/2024

1. M/s. Royaldrive Pre Owned Cars LLP, TM Building, Machingal, Melmuri, Malappuram (hereinafter referred to as "applicant") is a limited liability partnership registered under CGST and KSGST Act bearing GSTIN 32AAUFR0385F1Z2 engaged in the business of inward and outward supply of old and used luxury cars.
2. At the outset, it is clarified that 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 herein after to the provisions of the CGST Act, Rules and Notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued thereunder.
3. **The applicant requested advance ruling on the following:**
 - 3.1. In view of the Notification No. 8/2018-Central Tax (Rate) dated 25th January 2018 issued by the Department of Revenue, Ministry of Finance, Government of India, the applicant would like to get clarification as to whether the input tax credit would be available on inward supplies of goods or services which are in the nature of direct expenditures like spare purchases, repairs and refurbishment costs of vehicles, etc., except on purchase of old or used motor vehicles as mentioned in para 2 of the notification.
 - 3.2. In view of the Notification No. 8/2018-Central Tax (Rate) dated 25th January 2018, the applicant would like to get clarification as to whether the



input tax credit would be available on inward supplies of other goods or services except on purchase of old or used motor vehicles as mentioned in para 2 of the notification. That is, whether the credit of input tax is available on inward supplies of goods or services like office/ showroom rent, telephone, advertisement, professional charges, capital goods, etc., except that on inward supply of old or used motor vehicles.

4. Contentions of the Applicant:

4.1. The applicant submits that they are engaged in the business of inward and outward supply of old and used luxury cars. They receive inward supply of used cars mostly from unregistered persons and before making it outward supply they do minor repairs and refurbishment work on the said cars.

4.2. The applicant pays GST on the value of margin they received, i.e. the taxable value determined by the difference of selling price and purchase price of the vehicle as provided in Notification No 08/2018-CT (Rate) dated: 25.01.2018. For business promotion, the applicant uses inward supplies such as advertisements, rent, purchase of spare parts, services from professionals, stationery, etc.

4.3. The applicant submits that sub-section (1) of section 16 of the CGST Act 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 or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

4.4. Further, as per Rule 32 (5) of CGST Rules provides where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference



between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

4.5. The applicant also submits that Notification No. 08/2018-CT (Rate), dated 25.1.2018 is an exemption Notification issued under section 11(1) of the CGST Act, which provides for exemption from payment of Central tax in excess of 9% or 6%, as the case may be for old and used motor vehicles. It also provides how to determine the taxable value of the outward supply, which shall be the actual margin from the difference between the selling price and purchase price.

4.6. There is a restriction in Para 2 of the Notification No. 08/2018-CT (Rate) dated 25.01.2018 that this Notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the CGST Act or CENVAT defined as per CENVAT credit Rules, 2004 or input tax credit of VAT or any other taxes paid on such goods. The applicant submits that the word "such goods" means the old or used vehicles in their case and restricts ITC by the Notification only on the availment of inward supply of the same from any registered persons. Thus there is no restriction on utilizing ITC from other inward supplies such as spares, repairs, refurbishment costs, rent, telephone, advertisement, professional services, capital goods, etc.

4.7. Finally the applicant concludes that as per Notification No. 08/2018-CT(Rate), dated 25.01.2018 read with sub Rule (5) of Rule 32 of CGST Rule, 2017, the input tax credit is not available on the inward supply of old or used vehicles for its further supply and there is no restriction in utilizing ITC on the tax paid on other inward supplies such as repair and refurbishment of vehicle, rent, spare purchases, advertisement, professional charges, other office requirements like telephone, capital goods, etc. Also there is no restriction in utilizing the credit so availed for the payment of tax as per the said Notification.

4.8. The applicant relied on to the decision of Karnataka Advance Ruling Authority in Attica Gold Pvt Ltd AAR [(2022(11) TMI 260) , in which the claim of input tax credit on expenses like rent, advertisement expenses, commission



professional expenses and capital goods was upheld, subject to section 16 to 21 of the CGST Act and rules 36 to 45 of the CGST Rules made there under.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer Superintendent, Central Tax, Manjeri Range under section 98(1) of the CGST Act for their remarks. The jurisdictional officer has offered their remarks relied up on a similar case disposed by Maharashtra Advance Ruling Authority in respect of M/s Deccan Wheels [ARA-103/2019-20/B-81] dated 25/10/2021. In this case Maharashtra AAR pronounced that ITC on indirect expenses cannot be availed if the taxpayer opts for Notification No. 08/2018/-CT (Rate), dated 25.01.2018. The jurisdictional officer also reported that the questions raised in the application is not pending or decided in any proceedings in the case of the applicant under any provisions of the CGST Act.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 16.01.2024 through Virtual Mode. Sri. CA Jamsheed Adam, FCA represented the applicant for personal hearing on behalf of the applicant. The representative explained the business model and filed additional submissions for establishing their eligibility of input tax credit on various expenses, which directly or indirectly, influenced the selling price of the goods. He reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

7. Discussion and Conclusion:

7.1. We have carefully examined the facts of the matter filed along with the application and submissions both oral and written, made by the applicant as well as the jurisdictional officer. The issue to be decided is the admissibility of input tax credit of tax paid on various activities relating to the subsequent marginal sale of old and used luxury cars purchased from both registered and unregistered persons. The questions on which advance ruling is sought by the applicant falls within the purview of clauses (b) and (d) of sub-section (2) of Section 97 of the CGST Act, 2017; i.e; "applicability of a notification issued



under the provisions of this Act” and “admissibility of input tax credit of tax paid or deemed to have been paid” and therefore admitted the application on merits.

7.2. The applicant is a regular taxpayer registered under the CGST/KSGST Act, engaged in the business of buying and selling of second hand goods such as old used luxury cars. When a used car is purchased from a customer, initially the applicant evaluates both external and internal condition of the vehicle by using both technology as well as the service of technically qualified persons. Then they decide the additional services such as refurbishment of the vehicle and replacement of spares or body parts, if any, for scaling up the value of the vehicle which are required for subsequent sale. The applicant either uses their own service station or external service stations to repair and refurbish such used vehicles.

7.3. The applicant has submitted that for its transactions (buying and selling of second hand cars) it applies GST as per Notification No.08/2018-CT (Rate), dated: 25.01.2018 of the Department of Revenue, Ministry of Finance, Govt. of India. The said notification is reproduced under;

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the central tax on intra-state supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as are given in corresponding entry in column (2), from so much tax as specified in Schedule IV of Notification No. 1/2017 -Central Tax (Rate), as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4), of the said Table, on the value that represent margin of the supplier, on supply of such goods.



| Sl. No. | Chapter Heading, Sub heading or Tariff item | Description of goods | Rate |
|---------|---|---|------|
| 1 | 8703 | <p>Old and used petrol liquified petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000mm or more</p> <p>Explanation- for the purpose of this entry, the specification of the motor vehicle shall be determined as per the motor vehicles Act, 1988 (59 of 1988) and the Rules made there under.</p> | 9% |
| 2 | 8703 | <p>Old and used diesel driven motor vehicles of engine capacity of 1500cc or more and of the length of 4000mm.</p> <p>Explanation- for the purpose of this entry, the specification of the motor vehicle shall be determined as per the motor vehicles Act, 1988 (59 of 1988) and the Rules made there under.</p> | 9% |
| 3 | 8703 | <p>Old and used motor vehicles of engine capacity exceeding 1500cc, popularity known as sports utility vehicles (SUV's) including utility vehicles.</p> <p>Explanation- for the purpose of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above.</p> | 9% |
| 4 | 87 | All old and used vehicles other than those mentioned from Sl. No. 1 to Sl.No. 3 | 6% |

Explanation – for the purpose of notification



(i) in case of a registered person who has claimed depreciation under section 32 of the Income Tax Act 1961 (43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for the supply of such goods and the depreciated value of such goods on the date of supply and where the margin of such supply is negative, it shall be ignored; and

(ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

2. This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the CGST Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of value added tax or any other taxes paid on such goods.

7.4. Sub-rule (5) of rule 32 of CGST Rule, 2017 provides the determination of value of supply in buying and selling of second hand goods. The same is reproduced below;

“ where a taxable supply is provided by a person dealing in buying and selling of second hand goods, ie; used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

7.5. As per Para 2 of the notification referred in this ruling, it is clarified that the benefit of tax payment against the margin of transaction is not eligible, if the supplier of such goods has availed input tax credit or any other taxes paid on such goods. Here the words “such goods” has been defined in column (3) of the table in the notification as “Description of goods”, which is the four different categories of used vehicles distinguished as per their dimension and engine capacity for the purpose of classification.



7.6. Conjoint reading of para 7.3 to 7.5 reveals that where a registered person who is engaged in the supply of buying and selling of second hand goods such as used motor vehicles without availing any credit of input tax on the taxes paid at the time of purchase of such goods i.e, used motor vehicles, the GST at the rate as specified in the aforementioned notification shall be payable by such registered person on the value of supply that represents the margin of the registered person. Further, both sub-rule (5) of rule 32 of the CGST Rules, 2017 as well as the notification referred in this ruling not mandating the non availment of credit of input tax on the taxes paid for receipt of goods or services other than the credit of input tax on the taxes paid at the time of purchase of used cars to get the benefits available under the said rule and notification.

7.7. The applicant requests clarity on the eligibility of input tax credit of tax paid on purchase of spare parts, refurbishment services of vehicles and professional charges for scaling up the sale value of such used vehicles, on the ground that these are direct expenses for increasing the sale value of the used vehicle and the margin of the applicant. Further, the applicant also requests clarity on the eligibility of input tax credit of tax paid on stationary, office rent, advertisement, telephone charges etc used for their furtherance of business. According to them, purchase of spares for replacement and refurbishment services of vehicles are the direct expenses, which increases the cost of vehicle for sales and thereby increases the margin value and tax payment. Other inputs and input services like stationary, rent, telephone, advertisement, professional charges, etc, are the indirect expenses, influenced in making the net profit or loss of the business.

7.8. Sub-section (1) of section 16 of the CGST Act provides that subject to such conditions and restrictions and in the manner specified in section 49 of the CGST Act, a registered person is 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 or furtherance of business.

7.9. Hence, for the purpose of determining the eligibility of input tax credit, we have further verified the conditions and restrictions prescribed in the



prevailing Act and rules. The conditions for availment of credit of input tax charged on any supply of goods or services or both are prescribed in sub-section (2) to sub-section (4) of section 16 of the CGST Act. Further, section 17 of the CGST Act provides restrictions and blocking of input tax credit for certain supplies on which tax has been charged. Neither sections 16 and 17 of the Act nor the notification No. 08/2018- CT (Rate) dt 25.01.2018 restricts the eligibility of input tax credit of tax paid on direct and indirect expenses incurred in the business of second hand sales of luxury cars engaged by the applicant.

7.10. Hence, it appears that the applicant would be eligible to claim input tax credit of tax paid on both direct and indirect expenses such as repairs and refurbishment works of used vehicle, spare purchases, office stationary, telephone, rent, advertisement, professional charges, etc, utilized in second hand business of luxury cars, subject to the conditions prescribed under section 16 to section 21 of the CGST Act and rules 36 to 45 of CGST Rules.

RULING

Question-1: In view of the Notification No. 8/2018-Central Tax (Rate) dated 25th January 2018, the applicant would like to get clarification as to whether the input tax credit would be available on inward supplies of goods or services which are in the nature of direct expenditures like spare purchases, repairs and refurbishment costs of vehicles, etc., except on purchase of old or used motor vehicles as mentioned in para 2 of the notification.

Ruling: Available, subject to the conditions prescribed under section 16 to section 21 and rules 36 to 45 of CGST Act and Rules made there under.

Question-2: In view of the Notification No. 8/2018-Central Tax (Rate) dated 25th January 2018, the applicant would like to get clarification as to whether the input tax credit would be available on inward supplies of other goods or services except on purchase of old or used motor vehicles as mentioned in para 2 of the notification. That is, whether credit of input tax is available on inward supplies of goods or services like office/ showroom rent, telephone



advertisement, professional charges, capital goods, etc., except that on inward supply of old or used motor vehicles.

Ruling: Available, subject to the conditions prescribed under section 16 to section 21 and rules 36 to 45 of CGST Act and Rules made there under.

P. Mayathri
Gayathri P.G

Joint Commissioner of Central Tax
Member

Abdul Latheef K
Abdul Latheef K
Joint Commissioner of State Tax
Member

To,

M/s Royaldrive Pre Owned Cars LLP,
612-B, C, D New 5/342,343,344, TM Building,
Machingal, Melmuri, Malappuram-676517

Copy submitted to:

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R. Building, I.S .Press Road, Cochin-682018.[E-mailID:cccocchin@nic.in;ccu-excok@nic.in].
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram.
3. The Commissioner of Central GST and Central Excise, Calicut Commissionerate.

Copy to:

1. The Joint Commissioner, TPS, HQ, Thiruvananthapuram.
2. The Deputy Commissioner, ITMD, Thiruvananthapuram.
(for uploading in the website of the Department).
4. The State Tax Officer, Tax Payer Services Circle, Manjeri, Malappuram.
4. Central Tax Manjeri Range, Malappuram Division.



