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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7235-2022
Decided on : 12.11.2024

M/s BMW India Pvt. Ltd.

. . . Petitioner(s)

Versus

The Appellate Authority for Advance Ruling for the State of Haryana and
another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Ms. Priyanka Rathi, Advocate and
Mr. Ashwini Chandrasekaran, Advocate
for the petitioner(s).

Ms. Mamta Singla Talwar, DAG, Haryana.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. A clarification of availability of Input Tax Credit in respect of
demo vehicles, has been issued vide Circular No.231/25/2024-GST
(F.NO.CBIC-20001/6/2024-GST], dated 10.09.2024, wherein, it has been
held as under:-

**“5. Availability of input tax credit on demo vehicles in cases
where such vehicles are capitalized in the books of account by
the authorized dealers.**

***5.1 As per provisions of section 16(1) of CGST Act, every
registered taxpayer is entitled to take input tax credit charged on
any supply of goods and services made to him, where such goods
or services are used in the course or furtherance of business of
such person, subject to such conditions and restrictions as may be
prescribed and in the manner which is specified.***

***5.2 Further, “goods” has been defined in section 2(52) of
CGST Act, as,***

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"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

5.3 Also, **section 2(19) of CGST Act** defines "capital goods" as,

"capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

5.4 As mentioned in paras above, as the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers. Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" under section 2(19) of CGST Act. As per provision of section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take input tax credit in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under section 2(52) of CGST Act, includes even capital goods. Further, section 2(19) of CGST Act also recognizes that capital goods are used or intended to be used in the course or furtherance of business. **Accordingly, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.**

5.5 However, it is to be mentioned that in case of capitalization of demo vehicles, availability of input tax credit would be subject to provisions of section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. It

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is further mentioned that in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the Central Goods and Service Tax Rules, 2017.”

2. The said clarification has been also taken note of by the Haryana Government, and they have issued similar clarification vide Circular No.231/25-HGST/2024/GST-II (CBIC Circular No.231/25/2024-GST, dated 11.09.2024), dated 13th September 2024.

3. Said circular discussed the availability of Input Tax Credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons in terms of clause(a) of section 17(5) of Haryana Goods & Services Tax Act, 2017.

Further, it deals with the availability of the Input Tax Credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.

The circular dated 13th September 2024 and the circular dated 10th September 2024, are taken on record.

4. Keeping in view thereto, the order impugned in the present writ petition dated 28th June 2021, whereby, the appeal preferred by the petitioner under Section 101 of Central Goods and Services Tax Act, 2017/Haryana Goods & Services Tax Act, 2017, would not be sustainable.

5. The observations of not giving benefit of Input Tax Credit to vehicles, which have been initially used as demo vehicles, is accordingly, set-aside in view of the extension of grant of availability of Input Tax Credit with respect to the demo vehicles, as clarified by the aforesaid circulars.

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The order dated 09.10.2018 is, therefore, set-aside accordingly, and the petitioner is entitled to the benefit of ITC in the aforesaid terms, with consequent actions to follow.

Writ petition stands disposed of accordingly.

Misc. application(s), if any, also stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

November 12, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No