

## AAR: ITC admissible on motor-vehicles 'leased' to customers

Nov 12, 2020

In the matter of M/s Dream Road Technologies Private Limited [TS-974-AAR-2020-NT

]

### Conclusion

Haryana AAR allows ITC on motor-vehicles to Applicant, engaged in business of providing motor-vehicles on operating lease to its customers, in view of exception contained u/s 17(5)(a) of CGST Act, 2017; Observes that as per section 17(5), it is clear that ITC is not available in respect of motor-vehicles for transportation of persons having sitting capacity for not more than 13 persons (including driver) except when they are used for making specified taxable supplies namely (a) Further supply of such motor-vehicles, (b) Transportation of passengers or (c) Imparting training on driving such motor-vehicles; Notes Applicant's plea that in terms of Section 2(83) 'outward supply' also includes lease and hence, "further supply of such motor vehicle" shall also include leasing of such motor vehicle; Holds that, activities carried on by Applicant regarding supply of tax paid motor vehicles on monthly lease rent plus GST as applicable to its customers under a proper agreement make it eligible for availment of ITC on motor vehicles for the tax paid by it while acquiring the said vehicles subject to properly satisfying the conditions laid down under the CGST/HGST Acts; Perusing the condition laid down w/s 16(3), lays down that Applicant will not claim depreciation on tax component charged on such Motor Vehicles under the provisions of Income Tax Act, 1961; Perceives that the Applicant hasn't started its operation fully at the time of seeking Advance Ruling and the provisions of ITC under GST law are fully applicable, provided it complies with the provisions contained in them and other rules and notification framed and issued there under:AAR HAR

### Decision Summary

#### In the matter of M/s Dream Road Technologies Private Limited

The order was passed by Smt. Sangeeta Karmakar (Member CGST) and Shri. Vidya Sagar (Member SGST).

CA Rajat Mohan and CA Priyanka Sachdeva appeared on behalf of the Applicant.

[\[TS-974-AAR-2020-NT\]](#)

### Case Law Information

#### Appellant/Applicant/Complainant Name

- Dream Road Technologies Private Limited

#### Counsel of Appellant/Applicant/Petitioner

- Rajat Mohan
- Priyanka Sachdeva

#### Authority Level & Location

- Authority for Advance Ruling Haryana

#### Date of Pronouncement

- 2020-08-21

**Ruling in favour of**

- Respondent

**Judges**

- Sangeeta Karmakar
- Vidya Sagar

**Act - Section Number**

- CGST Act, 2017 - S.17 (Appointment of credit and blocked credits), S.2(83)  
(Definition of "outward supply")



HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HR/HAAR/2020-21/4, dated 21-08-2020

Name & Address of the Applicant	:	M/s Dream Road Technologies Private Limited, Plot No. C-1, Info City, Tower-A, Gurugram, Sector-34, Gurugram - 122002
GSTIN of the Applicant	:	06AAGCD6506P1ZB
Date of Application	:	21-08-2020
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Section 97(2) Clause(d) – (d) admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	13-10-2020 and 16-10-2020
Present for the Applicant	:	Sh. Deepak, Manager (Operations); Ms. Priyanka Sachdeva, Advocate; Ms. Richa Jain, CA; and Sh. Rajat Mohan.

Memo No.: 2981  
Dated: 29-10-2020

**1. Brief facts of the case:**

- 1.1** The Applicant is engaged in the business of providing motor vehicles on operating lease to its customers. According to the Applicant, he is permitted to claim full Input Tax Credit on the said purchase of motor vehicles as per section 16 of CGST Act, 2017 read with section 17(5) of CGST Act, 2017 for the reasons narrated in his application.
- 1.2** According to section 16 of CGST Act, 2017 registered person is eligible to take credit of input tax charged on supply which is used or intended to be used in the course or furtherance of business subject to the conditions prescribed in section 16(2) of CGST Act, 2017.
- 1.3** The applicant will not claim the depreciation on the tax component charged on such motor vehicles under the provision of Income Tax Act 1961, hence will comply with the condition of Section 16(3) of CGST Act and thereby full Input Tax Credit shall be permissible.

**Relevant Extracts of Section 16 of CGST Act, 2017 recited below-**

**“16. Eligibility and conditions for taking Input Tax Credit-**

(1) 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.

(2) notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,



- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this act, or such other taxpaying documents as may be prescribed;
- (b) he has received the goods or services or both.

**explanation.** —for the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.
- (c) subject to the provisions of section 41 or section 43a, the tax charged in respect of such supply has been actually paid to the government, either in cash or through utilization of Input Tax Credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39”

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961) the Input Tax Credit on the said tax component shall not be allowed.

- 1.4 Section 17(5) of CGST Act, 2017 specifies the supplies on which Input Tax Credit shall not be admissible. Purchase of motor vehicle falls under section 17(5)(a) which states that Input Tax Credit on purchase of Motor Vehicles used for transportation of passengers having seating capacity of less than 13 shall not be allowed subject to some exceptions.

**Relevant Extracts of Section 17(5) of CGST Act, 2017 are reiterated below for reference:-**

“(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”

- 1.5 The meaning of motor vehicle is defined under section 2(76) of CGST Act, 2017, it states that:-

“motor vehicle” shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988)”.

**Further According to section 2(28) of Motor Vehicles Act, 1988**

“motor vehicle or vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been



*attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters”*

Prima Facie from the above definition, it can be inferred that the motor vehicles obtained by the applicant comes under the meaning of motor vehicle and thus section 17(5)(a) of CGST Act, 2017 is applicable on the same.

- 1.6 As per section 17(5)(a) of CGST Act, 2017 Input Tax Credit shall be allowed in case such Motor Vehicles is used for “Further Supply”. Since the applicant is in the business of providing motor vehicles on lease thereby Input Tax Credit will be allowable by virtue of exception of the above-stated section.
- 1.7 To determine the meaning of words “further supply of such motor vehicle”, it is required to take into consideration the meaning of supply. Since the word “Further Supply” has not been defined in the Act and thus one has to go by definition of “Supply” which is the very plinth of GST Law. The term “further” prefixed to “Supply” is merely in the form of adverb and does not differentiate it from “supply” by any stretch of the imagination.

Meaning of “supply” is given under section 7 of CGST Act, 2017 which clearly states that the supply includes leasing also.

**The relevant extract of section 7(1)(a) of CGST Act, 2017 is as mentioned below:**

*“(1) for the purposes of this act, the expression “supply” includes-*

*(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”*

From the above inclusive definition of supply, it can be inferred that the “supply” includes leasing also. Thereby “further supply of such motor vehicle” shall also include leasing of such motor vehicle.

- 1.8 Further, section 2(83) of the CGST Act, 2017 also defines the meaning of outward supply, which states that outward supply includes lease also. Thereby leasing of motor vehicles is included in the definition of outward supply.

**The relevant extract of section 2(83) of CGST Act, 2017 is as mentioned below:**

**“2. In this Act, unless the context otherwise requires, —**

*“Outward supply” in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode”*

- 1.9 The activity “Leasing” comes under the definition of “Supply” as per section 7 of CGST Act, 2017. Therefore, vide section 17(5)(a) of CGST Act the same falls



under the definition of “further supply of such motor vehicles” and thus Input Tax Credit on purchase of such motor vehicles shall be admissible to the applicant.

- 1.10** The applicant would like to herein mention a ruling which had similar facts and it was held that the Input Tax Credit shall be admissible to the applicant. (Complete ruling is enclosed herewith this application as Enclosure-II)

**Relevant Extract of para 7 in Nursing Transport, In re [2019] 104 taxmann.com 86 (AAR MADHYA PRADESH)**

*“7.5 A plain reading of the above referred relevant portion of the Sections make it absolutely clear that in respect of motor vehicles, except in certain circumstances, the Input Tax Credit is not available. These exceptional situations are enumerated in the Sub Section 5(a) after the amendment and sub section 5(a)(i) and (ii) before the amendment. In the present case before us is that the Applicant is providing cars on Lease Rent to their customers for carrying passengers and hence not covered by the exception as provided in clause (B) and (C) of sub section 5(a) after the amendment and in clause (B) and (C) of sub section 5(a)(i) before the amendment as well as in Sub section 5 (a) (ii) of Section 17 before the amendment. The sub section 5 (a) (i) reads as "for making following taxable supplies namely" and sub section 5(a)(A) after the amendment /5(a)(i) (A) before the amendment, reads as "further supply of such vehicles or conveyances"*

*“7.6 The words "taxable supply" & "further supply" finding a place in the said sub-sections are of great importance here and therefore we find it necessary to draw the attention towards their literal and legal meanings in the GST regime. The term "supply" has been categorically defined under Section 7(1)(a) of the CGST Act 2017 which reads as under—*

**Section 7. Scope of Supply:** - (1) for the purpose of this Act, the expression "supply" includes –

*(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”*

*“7.7 Thus the term 'Supply' is wide in its import and includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Similarly, a "taxable supply" means a supply of goods and/or services which is chargeable to goods and service Tax under the GST Act”*

*“7.8 It is pertinent to mention here that the taxable event under GST is the supply of goods and/or services made for consideration in the course or furtherance of business. In order to constitute a supply "the essential elements required to be satisfied are in the nature of (i) supply of goods and/or services, (ii) supply for a consideration, (3) supply made in the course or furtherance of business (iv) supply made in taxable territory, (v) supply a taxable supply and (vi) supply made by a taxable person. Now on applying the principals laid down by the law, as highlighted above, to the facts of the instant case as also reflecting in the Lease Agreement entered between the Applicant and its customer, we find that -*

*(i) Applicant is supplying goods i.e. cars and services i.e. lease rent services,*



- (ii) the supplies are against a monthly monetary consideration
- (iii) the supplies are in the course of applicant's business
- (iv) the supplies are effected in taxable territory
- (v) supplies are taxable in nature and
- (vi) Applicant is registered under GST Act

Thus we find that the activities carried out by the applicant are in the nature of "taxable Supply".

**7.9** Now we come to the moot question to be answered in the issue at hand. Whether this "taxable supply" made by Applicant satisfies the exception situation provided in subsection 5(a) (i) (A) before the amendment and subsection 5(a)(A) after the amendment to make it eligible for Availment of Input Tax Credit on Motor vehicle i.e. cars, purchased and then provided to their customers under Lease Rent Agreement? The above mentioned sub section mentions about making of "further supply" of such vehicles or conveyance and hence the deciding factor would be the term "further supply". We observe that the term "further supply" has not been defined in the Act, therefore one has to go by definition of "supply" which is the very plinth of GST law. The term 'further' prefixed to 'supply' is merely in the form of adverb and does not differentiate it from 'Supply' by any stretch of imagination.

**7.10** In the light of the facts as discussed in details in previous paras, the activities carried by the Applicant regarding supply of tax paid motor vehicles on monthly ease rent plus Goods & Service Tax as applicable to their customer under a proper agreement properly satisfies the conditions laid down under Section 17(5) (a) (i) (A) before the amendment and under subsection 5(a)(A) after the amendment to make it eligible for Availment of Input Tax Credit on motor vehicle for the Tax paid by it while acquiring the said vehicles”

- 1.11** The applicant submitted an addendum dated 15-10-2020 on the issue of admissibility of his application. The contentions raised in the addendum are tenable and hence the application is heard on merits.
- 1.12** In support of his contentions, the applicant has submitted an undertaking/ declaration stating that we are starting the new business of leasing motor vehicles, this business model is only successful when we provide vehicles on lease at a lower price than owning such vehicles.

The starting of this venture depends on the allowability of input tax credit in respect of purchase of motor vehicles. If the input tax credit is ineligible then it will cost us and affect our profitability, due to this we will not be able to start the leasing business.

- 1.13** In relation to Advance Ruling Application (AR) No. AD0607200016499, dated 14<sup>th</sup> July, 2020, through this undertaking hereby confirms that in relation to proposed Business Segment namely “Used Car Leasing” company intends to discharge its liability according to notification No. 11/2017, dated 28-06-2017 as amended from time to time and corresponding notifications issued under CGST Act i.e. at the rate as applicable to the “Like Goods”.



It has been further confirmed that in order to charge aforesaid tax rate we will not claim any depreciation on the tax component charged on such motor vehicles under the provisions of Income Tax, Act 1961 and thus complying with the condition of Section 16(3) of CGST, Act 2017.

1.14 The balance sheet submitted for the year 2018-19 relates to Delhi branch of the applicant, hence not related to the present case.

2. **Question on which Advance Ruling is sought:**

(a) Whether the Input Tax Credit is admissible under section 16 subject to section 17(5) of CGST Act 2017 in case of purchase of motor vehicles for further providing such motor vehicles on operating lease to customers?

3. **Discussion**

3.1 Comments of the Proper Officer concerned have also been sought which are placed on record under memo No. 1172, dated 12-10-2020, wherein the Proper Officer opined that it is clear that as per section 17(5) of the CGST Act, 2017 input tax credit is not available in respect of Motor Vehicles for transportation of persons having sitting capacity for not more than 13 persons (including driver) except when they are used for making the following taxable supplies namely:

- (A) Further, supply of such motor vehicles.
- (B) Transportation of passengers; or
- (C) Imparting training on driving such motor vehicles

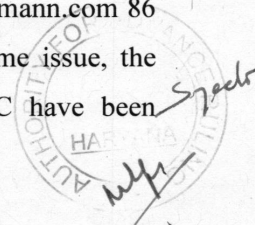
Also the term "supply" has been categorically defined under Section 7(1)(a) of the CGST Act 2017 which reads as under-

**Section 7. Scope of Supply:** - (1) for the purpose of this Act, the expression "supply" includes -

All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business"

On combined reading of above provisions of the CGST Act, 2017, it seems that input tax credit is admissible on purchases of motor vehicle for further providing such motor vehicles on operating lease to customers subject to the condition laid down w/s 16(3) of the CGST Act, 2017 that the applicant will not claim the depreciation on the tax component charged on such motor vehicles under the provisions of Income Tax Act, 1961.

3.2 In the advance Ruling of M/s Nursing Transport, In re [2019] 104 taxmann.com 86 (AAR MADHYA PRADESH) which has been delivered on the same issue, the essential element required to be satisfied for admissibility of ITC have been identified as follows:-





- (i) supply of goods and/or services,
- (ii) supply for a consideration,
- (iii) supply made in the course or furtherance of business
- (iv) supply made in taxable territory,
- (v) supply a taxable supply and
- (vi) supply made by a taxable person.

If we apply this yard stick in this case, the reply is affirmative-

- (i) Applicant is supplying goods i.e. cars and services i.e. lease rent services,
- (ii) the supplies are against a monthly monetary consideration
- (iii) the supplies are in the course of applicant's business
- (iv) the supplies are effected in taxable territory
- (v) supplies are taxable in nature and
- (vi) Applicant is registered under GST Act

**3.3** The applicant has not started his operation fully at the time of seeking Advance Ruling. The provisions of Input Tax Credit as contained in Chapter V of the GST Law are fully applicable on the applicant provided he complies with the provisions contained in them and other rules and notification framed and issued there under.

**4. Ruling:**

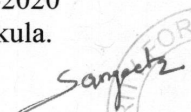
**Ques.** Whether the Input Tax Credit is admissible under section 16 subject to section 17(5) of CGST Act 2017 in case of purchase of motor vehicles for further providing such motor vehicles on operating lease to customers?

**Ans.** In the light of above discussion, the activities to be carried by the applicant regarding supply of tax paid motor vehicles on monthly lease rent plus goods and service tax as applicable under the HGST/CGST/IGST Acts to their customers under a proper agreement make it eligible for availment of Input Tax Credit on motor vehicles for the tax paid by it while acquiring the said vehicles subject to properly satisfying the conditions laid down under the said Acts.

Ordered accordingly.

To be communicated.

29-10-2020  
Panchkula.

  
(Sangeeta Karmakar)  
Member CGST

  
(Vidya Sagar)  
Member SGST

**Regd. AD/Speed Post**

M/s Dream Road Technologies Private Limited,  
Plot No. C-1, Info City, Tower-A,  
Gurugram, Sector-34, Gurugram - 122002

**Copy to:**

1. Principal Commissioner of Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Gurugram (East).
3. Deputy/Assistant Commissioner, CGST Commissionerate, Gurugram, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.