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**Input Tax Credit on demo and test  
drive vehicles – Advance Rulings  
put industry in confusion!**

A traditional site whenever you enter into an automobile showroom, is a series of vehicles kept for display, for customers to enjoy the look, feel and comfort of the vehicle. 'The product itself is its best advertisement' seems to be the motto, and also the need of customers. Hence, it becomes essential for dealers to purchase vehicles for demo and test drive. Further, dealers necessarily have to update such vehicles and sell previous demo and test drive vehicles after a specified period or specified number of kilometres travelled as per their agreement with OEMs.

Under GST, the issue of availability of Input Tax Credit ('ITC') on demo and test drive vehicles remains unsettled even after four years. The confusion roots from the fact that ITC is generally not available on motor vehicles.

## Restriction under GST on ITC eligibility

Section 16 of the Central Goods and Services Tax Act, 2017 ('CGST Act') entitles a registered person to avail ITC on supply of goods or services received by him and used in course or furtherance of his business. As demo and test drive vehicles are used for effecting sale of vehicles and in business promotion, there is no doubt on ITC eligibility at first place.

Section 17(5)(a)(A) of the CGST Act acts a barrier to avail such ITC, by disallowing ITC on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including driver) except when they are *'used for making taxable supply, namely: further supply of such motor vehicles.'*

Paraphrasing the above restriction, the intent of legislature is to provide ITC on motor vehicles that are used for making further taxable supply of such motor vehicles. On a closer scrutiny, a cautious eye will note that this exception does not differentiate between immediate sale or sale without use *vis-à-vis* sale after a certain period or sale after usage. One may submit that use of word **'for'** before **'further supply of such motor vehicle'** indicates that ultimately the vehicle should be used for its further supply, albeit of its usage in the meantime. Further, various law lexicons depict that expression **'such'** has wide coverage, when compared with **'as such'**. Had the intention of legislature been to restrict ITC on used vehicle, it would have used the words **'as such'** instead of **'such'**. Legislature seems to have deliberately used the word 'such' in this provision.

One may doubt on ITC eligibility basis the accounting treatment of demo and test drive vehicles, stating that these vehicles are usually capitalised in books and not treated as stock-in-trade. Importantly, unlike VAT laws, GST law does not create any distinction on eligibility of ITC based on accounting treatment of motor vehicles.

Hence, in Authors' view, **ITC will be available on demo and test drive vehicles** purchased by dealers and sold after a particular point in time.

The Authors also wish to point that for dealers who decide not to avail ITC on such vehicles (for any reason) will have a saving grace in form of concessional rate of GST applicable on sale of used motor vehicles. Hence, the loss will be limited to ITC not availed less GST payable on old vehicles (if ITC was availed).

## Advance Rulings on the issue

Lately, several inconsistent Advance Rulings have been pronounced on the impugned issue. Authors have a concern that though Advance Rulings are binding only on the Applicant, department's stand may be derived therefrom (specifically those adverse for taxpayers).

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<sup>1</sup>Notification No. 8/2018 -Central Tax (Rate) dated January 25, 2018

In **A.M. Motors, 2018-VIL-197-AAR (Ker.)**, the question before the Authority for Advance Ruling ('AAR') was on admissibility of ITC on demo cars. The AAR held that since demo car will be further sold, the dealer can be said to be using such car for further supply (even though sale takes place after a certain period). In **Chowgule Industries Private Limited, 2019-VIL-213-AAR (Goa), 2020-VIL-06-AAR (Mah.)**, it was held that ITC shall be available because the GST Act does not prescribe the time within which further supply is to be affected. Hence, the provision of Section 17(5) will not be triggered.

On the contrary, in **Platinum Motocorp LLP, 2021-VIL-54-AAR (Har.)**, the AAR denied ITC by stating that the term 'supply' has been prefixed by the word 'further' and due weightage should be given to the prefix. In essence, the term 'further supply' connotes 'resale' which is not the purpose of the Applicant behind purchasing demo cars. Similar view has been given by AARs in case of **Khatwani Sales and Services LLP, 2021-VIL-114-AAR (MP)** and **BMW India Private Limited, 2021-VIL-37-AAR (Har.)**.

In Authors' view, a plain reading of exception given under Section 17 does not express any ifs and buts. The simple point is that such vehicle must be further supplied, regardless of any usage, time period of sale or accounting treatment. Multiple adverse and contradictory Advance Rulings have only added to the woes and complexities of taxpayers.

## Concluding remarks

It is unfortunate to say that though the objective of introducing Advance Ruling mechanism was to limit unwanted litigations, contradictory Advance Rulings have created more confusions than it has solved. In case of **Chowgule Industries Private Limited (supra)** and **Platinum Motocorp LLP (supra)**, Applicants were authorised dealers of same manufacturing company. However, one dealer was allowed ITC on demo vehicles while the other was not. This results in price difference in different States, with some dealers forced to accept GST cost on demo vehicles.

With a handful of inconsistent Advance Rulings on the impugned issue, it is expected that department will not miss any chance of disallowing ITC on demo and test drive vehicles. Further, with newer models being regularly introduced and costs in automobile industry on the rise, ITC on demo and test drive vehicles will be significant. The Authors feel that it's high time for the industry to take a stable tax position for claiming ITC. The Industry should also approach GST Council to seek a clarification in their favour, putting all disputes to rest.



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