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**ADVANCE RULING No. KER/128/2021 Dated, 18th February, 2022**

**KERALA AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX DEPARTMENT  
Tax Tower. Thiruvananthapuram**

BEFORE THE AUTHORITY OF : Dr S. L. Sreeparvathy, IRS &  
: Shri Abraham Renn S., IRS

Legal Name of the applicant	M/s. MALABAR CEMENTS LIMITED
GSTIN	32AABCM5814C1Z2
Address	Walayar, Palakkad, Kerala - 678624.
Advance Ruling sought for	i) Whether input tax credit is admissible on GST charged by service provider on hiring of bus/motor vehicle having approved seating capacity of more than 13 persons for transportation of employees to and from the workplace? ii) If input tax credit is available, whether it would be restricted to the extent of cost borne by the applicant?
Date of Personal Hearing	26.10.2021
Authorized Representative	Mr. Kollengode Venkitaraman Padmanathan

1. M/s. Malabar Cements Limited (hereinafter referred to as the applicant) is a Government of Kerala owned Public Sector Company engaged in the manufacturing of cement.
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 the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued thereunder.
3. The applicant had requested an advance ruling on the following
- 3.1. Whether input tax credit is admissible on GST charged by service provider on hiring of bus/motor vehicle having approved seating capacity of more than 13 persons for transportation of employees to and from the workplace?
- 3.2. If input tax credit is available, whether it would be restricted to the extent of cost borne by the applicant?
- 4. Contentions of the applicant:**
- 4.1. The applicant submits that their factory operates 24 hours a day, on four shifts. Furthermore, the factory and mines are located in remote area where public conveyances are not available at all time. Since some of the factory shifts are in odd hours and since the factory is not easily accessible, the applicant has to provide transportation facilities to its employees in non-air-conditioned bus having approved seating capacity of more than 13 passengers for commuting to and from workplace. The service providers collect 5% GST on the vehicle hiring charges. In order to ensure that the transportation facility is used by only authorized persons/employees, the applicant issues pass to employees and a nominal recovery is made from them every month. The difference between the hire/rental charges paid to service providers and the nominal recovery made from the employees is part of the cost to the applicant.
- 4.2. Section 17(5)(b)(i) of CGST Act, 2017 has been amended with effect from 01.02.2019 to restrict input tax credit on leasing, renting or hiring of motor vehicles having approved seating capacity of not more than 13 persons. Section 17(5)(b)(i) reads as follows:-
- "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".
- 4.3. Clause (a) of Section 17(5) of CGST Act restricts ITC on motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including driver) except when used for a specific purpose. From a reading of Clause (a) and (b) of Section 17(5) of CGST Act, it is clear that ITC would be admissible on leasing, renting or hiring of a motor vehicle where the approved seating capacity is more than 13 passengers (including driver).

4.4. The Hon'ble High Courts in CCE, Chandigarh-II Vs. Federal Mogul Goetze (India) Ltd; 2015 (39) STR735(P&H) (as well as in CCE, Bangalore -II Vs Stanzen Toyotestsu India (P) Ltd, 2011 (23) STR 444 (Kar) has held that transportation of employees to the workplace has a direct bearing on manufacturing and hence, it is activity related to business. The transportation facilities are open to all employees of the applicant who are desirous of availing the facility. But once an employee ceases to be in employment with the applicant, he or she is not authorized to use the transportation facility. In other words, the employer-employee relationship is a must to avail the facility. Furthermore, the applicant is not engaged in supplying transportation facilities to its employees and it is only a part and parcel of the cost to the company. The Ministry of Finance in Press Release dated 10.07.2017, has clarified that "the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services). It follows there from that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST." It is clear that service provided by the employer to the employee in terms of contractual agreement of employment, which are treated as salary/cost to company (CTC), is outside the ambit of GST.

4.5. The transportation service does not constitute a supply in the hands of the applicant as it is merely a non-monetary consideration for services rendered by the employee. Regarding the extent of ITC admissible to the applicant, the Hon'ble Bombay High Court in CCE Nagpur Vs. Ultratech Cements Ltd; 2010 (260) ELT 369 Bom, has held that credit is not admissible to the manufacturer on part of the cost borne by the worker and proportionate credit embedded in cost recovered from employees, needs to be reversed. In light of the above-cited judgment, ITC will be restricted to the extent of the cost borne by the applicant.

4.6. The applicant further submits that the facts of the case are identical to In Re: M/s.Tata Motors Ltd- Authority for Advance Ruling, Maharashtra 2020 (9) TMI 352, wherein the Maharashtra AAR has held that ITC is available in respect of GST charged by service provider on hiring of bus/motor vehicle having a seating capacity of more than thirteen persons for transportation of employees to and from the workplace. The AAR further held that ITC is restricted to the extent of the cost borne by the applicant.

#### **5. Remarks of the Jurisdictional officer**

5.1. The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not offered any comments and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

#### **6. Personal hearing**

6.1. The applicant was granted an opportunity for a personal hearing on 26.10.2021. Shri Kollengode Venkitaraman Padmanathan represented the applicant in the personal hearing. The counsel reiterated the contentions made in the application and requested to issue a ruling based on the submissions in the application.

#### **7. Discussion and Findings**

7.1. The matter was examined in detail. The application is admissible under subsection (2) of section 97 of the Act. The issue to be decided is the eligibility of input tax credit of GST charged by the service provider on hiring of bus or motor vehicle having approved seating capacity of more than 13 persons for transportation of employees to and from the workplace and the extent of its eligibility.

7.2. The Applicant has engaged the service provider to provide bus transportation facility to their employees in non-air-conditioned buses having a seating capacity of more than 13 persons and the service provider is charging GST for the services rendered. The first question is regarding the eligibility of the applicant to avail input tax credit of such GST charged by the service provider.

7.3. Sections 16 to 18 of the CGST Act, 2017 stipulates 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. Subsections (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 or furtherance of his business and said amount shall be credited to the electronic credit ledger of such person. Section 17 of the CGST Act pertains to the apportionment of credit and blocked credits. Sub-section (1) of Section 17 provides that where the goods or services or both are utilized by the registered person partially for the purpose of any business and partially for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Likewise, subsection (2) of Section 17 provides that where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partially for exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. Sub-section (3) provides for prescribing how the apportionment shall be made in cases covered by subsection (2). Sub-section (4) of Section 17 provides for special provision for availment of ITC by banking companies. Subsection (5) of Section 17 provides the negative list of goods and services in respect of which input tax credit is not available.

7.4. The provisions of subsection (5) of Section 17 of the CGST Act which specifies the goods and services on which input tax credit is not available is relevant to decide the question raised by the applicant. The provisions of Section 17 (5) of the Act have been amended with effect from 01.02.2019 by CGST (Amendment) Act, 2018. The provisions as they existed before its amendment by CGST (Amendment) Act, 2018 is reproduced as below:-

"Section 17 (5): Notwithstanding anything contained in subsection (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a) motor vehicles and other conveyances except when they are used

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

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers: or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods:

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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;

(ii) membership of a club, health and fitness centre:

(iii) rent-a-cab, life insurance and health insurance except where-

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force:  
or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply."

7.5. The above-said amendment substituted clauses (a) and (b) with clauses (a), (aa), (ab) and (b) and the amended provisions of Section 17(5) effective from 01.02.2019 reads as follows:-

"17 (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;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. "

7.6. On a plain reading of the above provisions, it is evident that only the tax paid on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) is not available as input tax credit except under the situations prescribed therein and there is no restriction in availing input tax credit of the tax paid on motor vehicles or hiring or renting of motor vehicles having approved seating capacity of more than thirteen persons.

7.7. In the instant case, the applicant has engaged the service provider to provide transportation facilities to the employees in non-air-conditioned buses for commuting to and from the workplace and it is stated that the service provider is using motor vehicles having an approved seating capacity of more than thirteen persons (including the driver) for the same. Further, it is stated that applicant issues pass only to their employees, so that the transportation facility can be used by such employees alone and that a nominal amount is recovered on monthly basis from the employees to whom such pass is issued. Based on the discussion above, we conclude that the applicant is eligible for availing input tax credit of the tax paid for hiring of bus/motor vehicle having approved seating capacity of more than 13 persons for transportation of their employees to and from the workplace.

7.8. The second question raised by the applicant is regarding the extent to which the input tax credit can be availed by them as they are recovering a part of the cost incurred for transportation from the employees. The applicant cannot avail of the input tax credit of tax paid corresponding / attributable to the cost of transportation recovered from the employees.

Therefore, the eligibility of the applicant to avail input tax credit will be restricted to the extent of the cost of transportation borne by the applicant.

Given the observations stated above, the following rulings are issued;

#### **RULING**

1. Whether input tax credit is admissible on GST charged by service provider on hiring of bus/motor vehicle having approved seating capacity of more than 13 persons for transportation of employees to and from the workplace?

**Ruling:** The applicant is eligible to avail the input tax credit of GST charged by the service provider subject to fulfilment of conditions prescribed in Section 16 of the CGST Act, 2017.

2. If input tax credit is available, whether it would be restricted to the extent of cost borne by the applicant?

**Ruling:** Yes. The applicant is eligible to avail input tax credit only to the extent of the cost of transportation borne by the applicant

Sreeparvathy S. L.

Abraham Renn S.

Joint Commissioner

Additional Commissioner

Member Central Tax

Member State Tax