Ishan Resins & Paints Limited

Authority for Advance Ruling — West Bengal

40 of WBAAR/2019-20 dated 17/01/2020 (Case Number 46 of 2019; ARN… Dated **17.01.2020**

Q Questions Before the Authority

- Whether the supply of services by way of leasing goods transport vehicles without operator to a goods transport agency (GTA) is exempt under Sl No. 22(b) of Notification No. 12/2017-CT(Rate) dated 28/06/2017 (corresponding State Notification No. 1136-FT dated 28/06/2017).
- If not exempt, what is the appropriate classification and rate of GST on the leasing of goods transport vehicles without operator.
- Whether the input tax credit paid on the purchase of motor vehicles used for this leasing business is admissible.

F Facts

The applicant intends to lease trucks and tankers without operator to goods transport agencies or other persons. Under its proforma agreement, the vehicle is leased with a transfer of the right to use, so the lessee takes possession and control, provides the operator, and bears fuel, maintenance and insurance costs.

H Ruling

Exemption under Sl No. 22(b) of Notification 12/2017-CT(Rate) for leasing without operator to a GTA	**Not exempt (inferred). The ruling does not use the word 'not exempt' but holds the service taxable under Sl No. 17(iii).**	The exclusion rests on para 4.2: Sl No. 17(iii) restricts 'hire' in Sl No. 22 to transactions that do not transfer the right to use the goods.
Classification and rate of tax if not exempt	**SAC 997311, taxable under Sl No. 17(iii) of Notification No. 11/2017-CT(Rate) dated 28/06/2017 (State No. 1135-FT).**	The order does not state a percentage rate. Sl No. 17(iii) taxes the service at the same rate as applies to supply of the goods. Rate not legible/not stated in the order.
Admissibility of input tax credit on motor vehicles purchased for leasing	**Admissible: the applicant can claim input tax credit in accordance with law on the goods transport vehicles so leased out.**	The s.17(5)(a) bar on motor vehicles applies only to passenger vehicles (seating capacity not exceeding thirteen persons), so it does not apply to goods transport vehicles. Credit remains subject to the general conditions of law.

The authority held that the leasing of goods transport vehicles without operator is classifiable under SAC 997311 and taxable under Sl No. 17(iii) of Notification No. 11/2017-CT(Rate), because it is a transfer of the right to use goods and is outside the hire exemption in Sl No. 22. It further held that the applicant can claim input tax credit on

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the goods transport vehicles so leased, since the s.17(5)(a) bar covers only passenger vehicles with seating capacity not exceeding thirteen persons.

R Reasoning

The authority read Black's Law Dictionary to treat hiring as a bailment in which the hirer may gain possession, so hire can include transfer of the right to use goods. It then relied on the specific entry in Sl No. 17(iii) of the Rate Notification, which taxes the transfer of the right to use any goods, to conclude that the exemption in Sl No. 22 covers only hire that does not transfer the right to use. It accepted the Uttarakhand High Court decision in Sachin Malhotra as showing that the meaning of hire depends on context, and classified the service under SAC 997311 rather than SAC 9966, which is confined to rental with operator. On credit, it applied s.17(5)(a) and held that it reaches only passenger vehicles.

P Provisions Relied On

- Section 97(2)(a), (b) and (d) of the GST Act (admissibility of questions)
- Section 100(1), (2) and (3) of the GST Act (appeal provisions, as recited in the preamble)
- Section 103 and Section 104(1) of the GST Act (binding effect of ruling and voiding)
- Section 17(5)(a) of the GST Act (blocked credit on motor vehicles for passengers)
- Notification No. 12/2017-CT(Rate) dated 28/06/2017, Sl No. 22(b), and corresponding State Notification No. 1136-FT
- Notification No. 11/2017-CT(Rate) dated 28/06/2017, Sl No. 10 and Sl No. 17(iii), and corresponding State Notification No. 11…
- SAC 9966 and SAC 997311 (service classification)
- Commissioner of Customs & Central Excise v. Sachin Malhotra [2015 (37) STR 684 (Uttarakhand)] (cited by the applicant)
- Section 75 of the Motor Vehicles Act, 1988 and Section 65(105)(o) of the Finance Act, 1994, as described in Sachin Malhotra

! For the Practitioner

This ruling helps lessors of goods vehicles who provide them without operator to a GTA, because it confirms that such leasing falls under Sl No. 17(iii) and not the Sl No. 22 hire exemption. It also confirms that s.17(5)(a) does not block input tax credit on goods transport vehicles. It does not settle the rate, which the order leaves to Sl No. 17(iii) without stating a figure, and it binds only the applicant. The ruling does not address leasing of passenger vehicles or the position where the lessor retains the operator.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> wb_aar_40_2019-20_17.01.2020_irpl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com