

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING,
NO.1, GREAMS ROAD, CHENNAI -600 006.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING UNDER
SECTION 98 OF THE GOODS AND SERVICES TAX ACT 2017**

Members present are:

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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Advance Ruling No. 14 /ARA/2023, Dated: 15.06.2023

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) *on the concerned officer or the jurisdictional officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.*

GSTIN Number, if any / User id		33AAJCA1885H1ZN
Legal Name of Applicant		Access Healthcare Services Private Limited
Registered Address / Address provided while obtaining user id		A9, First Main Road, Ambattur Industrial Estate, Chennai, Tamilnadu 600 058.
Details of Application		GST ARA – 01 Application Sl.No.61/2022 dated 20.12.2022.
Concerned Officer		State :Ambattur Industrial Estate Circle, Chennai South Division. Centre : Chennai North Commissionerate ; Division: Ambattur
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	Input Services utilized for the purpose of rendering support services in health care sector across the world.
Issue/s on which advance ruling required		Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required		1. Whether tax paid on input services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to women employees, is eligible to be availed as Input tax credit (ITC)? 2. If eligible, can ITC be availed for services received from the date of introduction of proviso to section 17(5)(b)(iii) of CGST Act,2017 with effect from 1st February 2019.

The Applicant M/s Access Healthcare Services Private Limited, A9, First Main Road, Ambattur Industrial Estate, Chennai, Tamilnadu 600 058 (hereinafter referred as the Applicant) is registered under the GST Act, 2017 vide GSTIN No. 33AAJCA1885H1ZN. The Applicant has sought Advance Ruling on the following questions:

1. Whether tax paid on input services in respect of leasing/renting/hiring of motor vehicles to provide transportation facility to women employees, is eligible to be availed as Input tax credit (ITC)?

2. If eligible, can ITC be availed for services received from the date of introduction of proviso to section 17(5)(b)(iii) of CGST Act,2017 with effect from 1st February 2019.

2. In this regard the Applicant stated the following:

- That they are a Private Limited Company engaged in rendering IT enabled support services in the health care sector to customers located outside India. Since, the entire customer base of the Applicant is located outside India with different time zones, the Applicant's operating hours consist of five shifts - 8.30 AM to 5.30 PM, 9.30AM to 6.30PM, 5.30PM to 2.30AM, 6.30PM to 3.30AM AND 8.30PM to 5.30AM.
- That they are registered under the Tamilnadu Shops and Establishment Act, 1947 for all the places in the state of Tamilnadu. As per the Tamilnadu Shops and Establishment Act, 1947 and rules prescribed therein, it is mandatory for the Applicant to provide transportation facility for women employees working in shifts and provide for adequate protection of safety for women employees working between 8.00 PM to 6.00 AM. The relevant extract of the initial Notification dated 28.05.2019 and next notification dated 02.06.2022 issued by the government of Tamilnadu under the said Act is reproduced below;
 - *"(6) Women employees shall not be required to work beyond 8.00PM on any day in normal circumstances. Provided that the employer after obtaining written consent of the women employees, shall allow them to work between 8.00 PM and 6.00 AM , subject to providing adequate protection of their dignity, honour and safety.*
 - *(7) Transport arrangements shall be provided to the women employees who work in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport"*
- That in compliance with the said mandate, they procure services of leasing/renting /hiring of motor vehicles for passenger transportation and provide the same to women employees working in shifts. Further, the

Applicant has an internal policy, wherein it is mandatory for women employees working beyond 8.00 PM (either arriving to work place after 8.00 PM or leaving after 8.00 PM) to use the car facility provided by the Applicant for commuting to/from workplace and home. They have added that, no outsider will be permitted to use the transport facility provided by the Applicant.

- That the said policy requires that, in no circumstances shall a women employee be the last person to be dropped and a male employee shall accompany women employees at all times till the point of drop. Hence, the Applicant stated that they are providing transportation facility to all the employees who are working beyond 8.00 PM by taking measures to provide adequate protection of the dignity, honour and safety of the women employees.
- That all the employees to whom transportation facility is provided are directly working under the employment of the Applicant and there are no contract employees. No recovery of costs is made by the Applicant from the employees for providing transport facilities.
- That the Applicant has been receiving services of leasing/hiring/renting of motor vehicles for transportation of employees and paid tax on the same, either on reverse charge mechanism basis or on payment of consideration to supplier where the supplier has raised invoice on forward charge basis.

3.1. In their interpretation of law, the Applicant has contended that, section 17(5) of the CGST Act, 2017 has been substituted as under, vide CGST (Amendment) Act, 2018.

“(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.

3.2. The Applicant has also quoted circular No. 172/04/2022 dated 6th July 2022, issued by Ministry of Finance wherein it was clarified that the proviso after sub clause (iii) of clause (b) of subsection (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of subsection (5) of section 17 of the CGST Act. The said amendment was made based on the recommendations of the 28th GST Council meeting held on 21.07.2018 and it was made known to the trade public through the Press note wherein it has been stated “that the scope of input tax credit is being widened and it is now be made available in respect of goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force”.

3.3. The Applicant has placed reliance on the decision rendered in the case of RANE TRW STEERING SYSTEM LIMITED Vs. The Commissioner of Central Excise Central Tax, Chennai outer Commissionerate, under the erstwhile CENVAT regime, wherein it was held that an activity that is mandatory under a law satisfies the substantive part of the definition “input service”.

3.4. Further reliance is placed on the ruling of the Authority for Advance Ruling, Gujarat pronounced for M/s. Troikka Pharmaceuticals Limited, wherein it was held that ITC of the GST paid on canteen charges is available to the applicant on the food supplied to the employees of the applicant company as it is mandatory under Section 46 of the Factories Act to provide canteen facility to the employees”. Further, in the said ruling it was stipulated that for eligibility of ITC on GST paid for canteen facility, the burden of GST should not have been passed on to the employees of the Company.

3.5. Thus, the Applicant’s view is that the GST paid on transportation facility with adequate safety measures provided to women employees as per statutory requirement would be eligible to be availed as ITC.

4.1. The State jurisdictional Authority of the Applicant, vide their letter dated 12.01.2023, has stated that GST paid by the Applicant on Rent a cab service cannot be availed as ITC by them as per Section 17(5)(b)(iii) of the TNGST Act, 2017.

Further, they also stated that there are no Adjudication proceedings under Section 17(5) of the TNGST Act pending against the Applicant. Further to this, Joint Commissioner, Intelligence-II wing, Commercial Tax Department also reported that there are no pending proceedings against the Applicants as per Section 98(1) of CGST Act, 2017. In respect of Centre jurisdictional Authority, no comments were received and hence it is presumed that there are no pending proceedings against the Applicant in Centre.

5.1. The applicant, after consent, was given an opportunity to be virtually heard on 15.03.2023. The Authorized Representative (AR) of the applicant Sri.CA.M.Pandian, appeared before the authority and reiterated the submissions. The AR stated that there is a legal obligation under the Shops and Establishment Act to provide safe transport to women employees working in out of regular office hours. Further, working in night shifts is essential to cater to the foreign customers.

5.2. The AR has been asked to submit the copy of statutory legal enactment mandating provision of transport facility and copy of invoice issued by transport service providers. The Applicant has furnished copy of the tax invoice issued by the service providers for the month of January 2023 and Notification issued by the Labour and Employment Department vide G.O.Ms.No.60, Labour and Employment (K2), dated 28th May 2019 mandating transport arrangements to be provided to the women employees who work in shifts.

6.1. We have carefully examined the statement of facts, supporting documents filed by the Applicant and the additional submissions made during the hearing.

6.2. The Applicant is a Private Limited Company engaged in rendering IT enabled support services in the health care sector to customers located outside India. They are operating in shifts as their customers/recipients are located in various time zone. They are providing transport facilities to their employees.

6.3.1. As seen from the copy of agreement furnished by the Applicant, they have entered into an agreement with the service provider M/s. New Kannan Travel Lines India (P) Ltd., for providing transport facilities to the employees. In terms of the agreement, the service provider is the owner of commercial vehicles and has offered to provide such vehicles on rental/ lease basis to the company, for transporting the company's employees or associates, visitors, guests, representatives etc., as may be directed by the company.

6.3.2. As set out in the agreement, the service provider shall be leasing out vehicles on a monthly rental basis along with driver and the rental amount includes all costs that cover all taxes, rates and duties. The service provider shall raise an invoice on monthly basis for the services rendered in a particular month. The invoices issued may be supported by detailed documentation to substantiate the total costs and expenses charged by the service provider to the company.

6.3.3. As per Annexure –II to the agreement, motor vehicles such as Tavera, Sumo with seating capacity of 8+1 and Tempo Traveller 12+1 seater were provided and the invoice issued by the service provider also contains these vehicles in the description. The invoices issued by the other service provider namely M/s. Ginosys, Chennai also evidences usage of Sumo and tempo traveller for transport of employees of the Applicant. From this, it is evident that the vehicles rented out by the service provider are with seating capacity of less than 13 persons.

6.4. The question which needs to be answered is whether the applicant is entitled to avail input tax credit on GST paid towards renting/hiring of motor vehicles with seating capacity of less than thirteen persons (including driver) for providing transport facilities to women employees working beyond 8.00 PM, which is obligatory on the part of the Applicant as per the Tamilnadu Shops and Establishments Act.

6.5.1. To answer this question, it is imperative to refer the amended provisions of Section 17(5) of the CGST Act, 2017. As per CGST (Amendment) Act, 2018 (No. 31 of 2018) dated 29.08.2018, clauses (a) and (b) of subsection (5) of Section 17 has been substituted as under, with effect from 01.02.2019, vide Notification No. 02/2019 – Central Tax, dated 29.01.2019;

“(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;

- (i) membership of a club, health and fitness centre; and
- (ii) travel benefits extended to employees on vacation such as leave or hometravel 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.

6.5.2. Prior to substitution, clause (a) and (b) read as under:

- “ (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.

6.5.3. From the above, it is clear that, with effect from 01.02.2019, Input Tax Credit has not been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of not more than thirteen persons (including the driver).

6.5.4. However, as per the proviso to Section 17(5)(b), 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.

6.5.5. Further, it is seen that CBIC vide Circular No. 172/04/2022 dated 06.12.2022, issued by Ministry of Finance wherein it was clarified that the proviso after sub clause (iii) of clause (b) of subsection (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of subsection (5) of section 17 of the CGST Act.

6.5.6. In the instant case, it has been specifically mentioned in the invoices issued by the service providers that the seating capacity of the motor vehicles (including driver) is less than thirteen persons. However, it is obligatory on the part of the Applicant to provide transport facilities to women employees working beyond 8.00 PM, as per the provisions of the Tamilnadu Shops and Establishment Act, 1947. The initial Notification dated 28.05.2019 issued in this regard, where the relevant provisions of the said Act is as under;

"(6) Women employees shall not be required to work beyond 8.00PM on any day in normal circumstances. Provided that the employer after obtaining written consent of the women employees, shall allow them to work between 8.00 PM and 6.00 AM , subject to providing adequate protection of their dignity, honour and safety.

(7) Transport arrangements shall be provided to the women employees who work in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport"

6.6.1. From the above facts, it is clear that Section 17(5) of the CGST Act blocks input tax credit on motor vehicles used in transport of passengers up to the date of amendment ie., 01.02.2019. With effect from 01.02.2019, ITC is not allowed on leasing, renting or hiring of motor vehicles for transportation of passengers having approved seating capacity of not more than thirteen persons (including driver). As already discussed, the motor vehicles used by the Applicant have seating capacity of less than 13 persons, making them ineligible to avail ITC on such services.

6.6.2. However, the nature of business of the Applicant necessitates them to deploy women employees beyond 8.00 pm. Though, the seating capacity of the motor

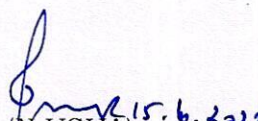
vehicles used for transportation of passengers in the case of the applicant is less than thirteen persons, there is a mandate to the applicant to provide transport facilities to women employees working beyond 8.00 PM, as stipulated in the Tamilnadu Shops and Establishments Act as per the Notification dated 28.05.2019 issued in this regard. The date of the said Notification is 28.05.2019 and hence the second proviso to the said Section is satisfied only from 28.05.2019.

6.7. Therefore, we find that ITC is not blocked on the renting of motor vehicles to provide transport facilities to women employees working between 8.00 PM to 6.00 AM as it is obligatory for an employer to provide the same to its employees under the law for the time being in force (Tamilnadu Shops and Establishment Act, 1947) as per Section 17 (5)(b) of the CGST Act, 2017 only from 28.05.2019, which is the date of the Notification issued by the Tamil Nadu Government in this regard.

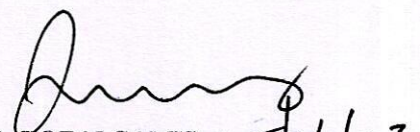
In view of the above, we rule as under;

RULING

1. The applicant is entitled to avail ITC on the tax paid towards leasing/renting/hiring of motor vehicles for providing transport facilities to women employees alone, who are arriving or leaving workplace between 8.00 p.m to 6.00 a.m.
2. ITC can be availed with effect from 28.05.2019 subject to the provisions of Section 16 of the CGST/ TNGST Act, 2017.


(N. USHA)
Member (SGST)




(R. GOPALSAMY)
Member (CGST) 15/06/23

To

M/s Access Healthcare Service Limited,
A9, First Main Road,
Ambattur Industrial Estate
Chennai 600058.

//By RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Chennai North Commissionerate.
2. The Assistant Commissioner (CT),
Ambattur Industrial Estate Assessment Circle,
3rd Floor, Integrated commercial Taxes and Registration Department,
South Tower Government Farm Village,
Nandhanam, Chennai 600 035.
3. Master File / spare – 1.

