

**THE AUTHORITY FOR ADVANCE RULINGS
IN HIMACHAL PRADESH**

(Constituted under section 96 of HPGST/CGST Act, 2017)

Advance Ruling No. HPGST-...../2019-10 Dated: 19-05-2020

BEFORE THE BENCH OF

1. *Shri Rakesh Sharma, Addl. Commissioner of State Taxes and Excise,Member (State Tax)*
2. *Shri Abhay Gupta, Joint Commissioner of Central Tax,Member (Central Tax)*

Name & Address of the Applicant	PRASAR BHARTI BROADCASTING CORPORATION OF INDIA (All India Radio), Shimla
GSTIN of the Applicant	02AAAJP0288R1ZR
Date of filing of Form GST ARA-01	22.11.2019
Represented by	Shri D. R. Patiyal, Assistant Engineer
Jurisdictional Authority- Centre	<i>Joint Commissioner of Central Tax</i>
Jurisdictional Authority- State	Addl. Commissioner of State Taxes & Excise
Whether the payment of fee discharged, if yes, the amount and	Yes.Rs.10000/- (Rs ten thousand only)

CIN	Payment Reference number: IP0209190000384
Question on which Advance Ruling is sought	1. Applicable GST rate on renting of motor cab service. 2. Whether ITC will be available to the recipient on the renting of motor cab service for transportation of employees.

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE HIMACHAL PRADESH GOODS AND SERVICE TAX ACT, 2017

The Applicant above is a public service broadcaster. The taxpayer avails services of hiring taxis for different purposes as mentioned below:-

- 1) To pick up/ drop shift duty-staff in odd hours.
- 2) This facility is being provided in odd hours to lady-employees, handicapped & general employees.
- 3) Taxis are hired for tour/OB recordings etc. within the state of Himachal Pradesh on different occasions.
- 4) Taxis are also hired to drop shift staff at High Power Transmitter during morning/ evening & for office work during day time.

The question raised by the applicant is whether input tax credit is available to the applicant on the services availed for the aforementioned items through contractors and what rate of GST will be applicable on the same.

RECORDS OF PERSONAL HEARING –

The applicant was heard for the first time on 25.09.2019. The applicant was represented by SH. D.R. Patiyal, Assistant Engineer. The representative reiterated the submissions made in his application and requested to provide clarification on the same. The applicant submitted a manual application for Advance Ruling but was unable to produce proof of payment of fee. He was informed that the date of application shall be counted from the day the requisite fee is paid in the government account. The case was adjourned for 15.11.2019. On 15.11.2019 Sh. D.R. Patiyal submitted that although they have deposited the fee under SGST head but due to some technical errors they were unable to offset the payment under the CGST head. The case was adjourned for 22.11.2019 and time was allowed to the applicant to submit relevant documents to support whether the service provided by him to his employees is obligatory under any law for the time being in force. The applicant vide his letter dated 19.11.2019 requested the authorities to extend the time given for procuring relevant documents in the case and sought permission to file the same by 20.12.2019. The case was listed for hearing on 09.01.2020, 23.01.2020 and for final hearing on 17.02.2020. The representative despite having sought a number of adjournments in the matter and opportunities afforded, failed to cite the law under second proviso to section 17(5) b of the SGST/CGST Act.

DISCUSSIONS AND FINDINGS OF THE AUTHORITY

We have carefully gone through the application for advance ruling and submissions made by the applicant. The applicant is a registered taxpayer and has entered into agreement for hiring commercially licensed vehicles for transportation of his employees. The question raised by the applicant is whether he is eligible to avail input tax credit of GST paid by the contractor on the services rendered to the

applicant. He also wants the authority to clarify on the GST rate applicable on the same.

As per Section 16 of the of the CGST/HPGST Act, 2017, every registered person shall, 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. However, on this availment of input tax credit (ITC), there are exceptions prescribed under Section 17(5) of the CGST/HPGST Act, 2017, which provides as under:-

17(5) Notwithstanding anything contained in sub-section (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 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:—

(i) further supply of such motor vehicles; or transportation of passengers; or

(ii) 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; and

(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; and

(ii) where received by a taxable person engaged—

(A) in the manufacture of such motor vehicles, vessels or aircraft; or

(B) 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”

The availability of ITC as per the provision of second proviso to section 17(5)b is available only on the condition that such goods or service or both is obligatory for an employer to provide to its employees under any law for the time being in force. Since, the applicant has not been able to cite any law under which the service of providing the facility of transportation to his employees is obligatory under any law, therefore ITC will not be available to him.

Further the rate of tax on renting of motor cab services as per the Notification No.20/2017 (State/Central Tax) dated 22.08.2017 & Circular No.130/49/2019-GST dated; 31.12.2019 is as under:-

Description of the supply	Rate (percent)	Conditions
Transport of passengers by motor cab where the cost of fuel is included in the consideration charged from the service recipient.	5	With limited ITC (of input services in the same line of business)
	12	With full ITC.

In view of the foregoing, we pass the following ruling.

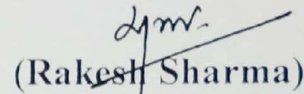
RULING

1. The applicable rate of tax on renting of Cabs as per Notification No. 20/2017 dated 22.08.2017 is 5% with limited ITC (of input services in the same line of business) and 12% with full ITC.
2. If the facility provided by a taxpayer for transportation of employees is not obligatory under any law, for the time being in force then no ITC will be available to such a taxpayer. The applicant will however be eligible to claim ITC for the service supplied at 12% GST Rate if the conditions laid down in the second proviso to section 17 (5)b are satisfied.

Pronounced

Date: 24/02/2020


(Abhay Gupta)


(Rakesh Sharma)

Joint Commissioner of Central Tax.

Additional Commissioner of State Tax.

C.No. Tech - Misc/10/2020-HQ-GST-SMC/285-290 dt. 6-03-2020
To

M/s PRASAR BHARTI BROADCASTING CORPORATION OF INDIA
(All India Radio),
Shimla-04

Copy to:

1. The Principal Chief Commissioner of Central Goods and Services Tax, Chandigarh.
2. The Commissioner of State Taxes and Excise Himachal Pradesh, Shimla-09.
3. The Commissioner Central Goods & Service Tax, Ground & First Floor, Commercial parking Complex, Chhotta Shimla, Shimla-2