

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560009**

Advance Ruling No. KAR ADRG 54/2020

Date : 15-12-2020

Present:

1. Dr. Ravi Prasad M.P.
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri. Mashhood Ur Rehman Farooqui,
Joint Commissioner of Central Tax, Member (Central Tax)

1.	Name and address of the applicant	M/s Page Industries Limited, Cessna Business Park, Tower-1, 3 rd Floor, Umiya Business Bay, Kadubeesanhalli Village, Varthur Hobli, Sarjapur-Marathahalli Outer Ring Road, Bengaluru-560103
2.	GSTIN or User ID	29AABCP2630D1ZS
3.	Date of filing of Form GST ARA-01	26.12.2019
4.	Represented by	Sri. K. S. Kamalakara, Cost Accountant & Duly Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru
6.	Jurisdictional Authority – State	LGSTO-15, Koramangala, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs. 5,000/- under the CGST Act vide CINVIB19122900447884dtd 27.12.2019 and Rs. 5,000/- under the KGST Act vide CIN CNRB19122900192462, dated 17.12.2019.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s. Page Industries Limited, Cessna Business Park, Tower-1, 3rd Floor, Umiya Business Bay, Kadubeesanhalli Village, Varthur Hobli, Sarjapur-Marathahalli Outer Ring Road, Bengaluru-560103 (hereinafter called "the applicant") having GSTIN number 29AABCP2630D1ZS, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of



KGST Rules 2017, in **FORM GST ARA-01** discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant are engaged in manufacture, distribution and marketing of Knitted and Woven Garments under the brand name of "Jockey", Swim-wears and Swimming Equipment's under the brand name of "SPEEDO". The applicant also gets the said garments manufactured from their job workers.

3. The Applicant had sought advance ruling on classification of goods and services is as under:-

"Whether in the facts and circumstances of the case, the promotional products / Materials and Marketing Items used by the Applicant in promoting their brand and marketing their products can be considered as "inputs" as defined under section 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as input tax credit in terms of section 16 of the CGST Act, 2017?"

4. The applicant states as under:

4.1 The applicant is engaged in the manufacture, distribution, and marketing of knitted and woven garments under the brand name of "Jockey" and swim wear and swimming equipments under the brand name of "Speedo". The applicant also gets the said garments manufactured from his job workers. The applicant market or sell their products through their own outlets and also through their distributors or dealers.

4.2 The applicant, to promote their brands & to market their products, is availing the services of advertisement agencies such as ads in the print media, electronic media, outdoor advertising etc. He is also procuring the promotional products and marketing materials for use in displaying their products at the point of purchase i.e. their showrooms & showrooms of their distributors/dealers. On availment of such advertisement services & procurement Promotional Products / marketing materials, the applicant is paying applicable GST thereon.

4.3 The availment of services of advertising agencies, procurement of POP items/marketing materials for display at the point of purchase, are being used for promotion of their brands and since they are used in the course or furtherance of their business, they avail the GST paid on such input service and inputs as "input tax credit" in terms of section 16 of CGST Act, 2017.

3.4 The applicant places work orders on ad agencies for procurement of said advertising agency services such as ads in the print media, electronic media, outdoor advertising etc. to promote & market their brands, and on supply of such services, the supplier of services will raise the invoices on the applicant. The said service being used in the course or furtherance of their business and it being "input



service" as defined in section 2(60) of CGST Act, 2017, the applicant based on the invoices issued by said supplier avails input tax credit of GST paid.

3.5 To promote their brands and market their products at Point of Purchase, the applicant procures POP materials from the suppliers and avails the input tax credit of GST paid on the same. Thereafter, the applicant under delivery challans without transferring the title of the said goods, shifts the same to their showrooms and showrooms of their distributors/dealers to use in displaying their products.

3.6 In some of the situations, on bill to ship basis, the applicant transfers the said POP materials directly from the supplier's premises to their point of purchases. In these transactions, the title of the said POP materials lies with the applicant and such POP materials will be used as asset in displaying their products at the point of purchase and therefore they are treating the said POP materials as "input" in terms section 2(59) of CGST Act, 2017 & availing the ITC of the same in terms of section 16 of CGST Act, 2017.

3.7 Similarly, to promote their brands and market their products, the applicant is getting manufactured the marketing items such as carry bag, table calendar, wall calendar, dairy, leather bags with embossing of their brand and wooden pens with engraving of brands etc. and on receipt of the same, the applicant is discharging the GST. The applicant is distributing such marketing items to their distributors/dealers to promote the brand & products. In view of the using of such marketing of items in promoting the brands & products being in the course of business or furtherance of their business and the said marketing items being "input" as defined in section 2(59) of CGST Act, 2017, the applicant is availing the input tax credit of GST paid on the same in terms of section 16 of CGST Act, 2017.

3.8 The applicant also exports such Promotional/ Marketing Materials to their overseas distributors/dealers on Free of Cost under Letter of Undertaking obtaining Guaranteed Remittance Waiver from their AD Bank as per Reserve Bank of India Guidelines to promote their brands in overseas countries and to market products. In view of the using of such marketing/promotional items in promoting their brands and products being in the course of business or furtherance of their business and the said marketing/promotional items being "input" as defined in section 2(59) of CGST Act, 2017, the applicant is availing the input tax credit of GST paid on the same in terms of section 16 of CGST Act, 2017

4. Regarding the question before this Authority, the applicant states as under:

4.1 The applicant has submitted that as per section 16 of CGST Act, 2017 every registered person, subject to terms and conditions specified in section 49 of CGST Act, 2017, is entitled avail the same as "Input Tax Credit" the GST paid by him on supply of goods or service to him, which are used or intended to be used in the course or in the furtherance of his business and same will be transferred to his

electronic credit ledger. For better appreciation, the provision of Section of 16(1) of CGST Act, 2017 is extracted here under:

"16. Eligibility and conditions for taking input tax credit.

(1) 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 the said amount shall be credited to the electronic credit ledger of such person."

It is clear from the above provision that to avail input tax credit of GST paid by the registered person on the service or goods or both supplied on him, the substantial condition is that he should have used or intend to use such goods or service or both in the course or furtherance of his business.

4.2 The applicant submitted that the phrase "used in the course or furtherance of business" in the section 16 of CGST Act, 2017 have very wide meaning. As per the said term it is not necessarily only goods or services or both procured in relation to their "output" but also include any goods or services or both used in the course or furtherance of business. Such goods used in the course or furtherance of business will qualify as "inputs" as defined in section 2(59) of CGST Act, 2017 and service will qualify as "input service" as defined in section 2(60) of CGST Act, 2017.

4.3 The applicant submitted that the Hon'ble Supreme Court in the case of Mazagon dock Ltd vs CIT and Excess Profit reported in 1958 (5) TMI 2- SUPREME COURT had an occasion to examine the scope of word "business" and held as follows:

"14.... The word "business" is, as has often been said, one of the wide import and in fiscal statutes, it must be construed in a broad rather than a restricted sense. ...

15. "The word 'business' connotes", it was observed by this court in Narain Swadeshi Weaving Mills Vs Commissioner of Excess Profits Tax, 1955 1 SCR 952 "some real, substantial and systematic or organised course of activity or conduct with a set purpose." The term business" therefore, particularly in fiscal statutes is of wide import."

4.4 The applicant submitted that the Hon'ble Bombay High Court in the case of Coca Cola India Pvt. Ltd. Vs CCE, Pune -III reported in 2009 (15) STR 657 (Bom.) interpreting the phrase "relating to business" used in the definition of "input service" as defined in rule 2(l) of CCR, 2004 and taking note of the word "business" interpreted by the Apex Court in various cases has held as follows:



“25. The expression *Business* is an integrated/continuous activity and is not confined / restricted to mere manufacture of the product. Therefore, activities in relation to business can cover all the activities that are related to the functioning of a business. The term *business* therefore, in our opinion cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only. In a case like the present, business of assessee being an integrated activity comprising of manufacture of concentrate, entering into franchise agreement with bottlers, permitting use of brand name by bottlers, promotion of brand name, etc.”

43. What follows from the above discussion is that the credit is availed on the tax paid on the input service, which is advertisement and not on the contents of the advertisement. Thus it is not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising, as long as the manufacturer can demonstrate that the advertisement services availed have an effect of or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product. The manufacturer thereby can avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. This test will also apply in the case of sales promotion.”

4.5 The applicant submitted that in the case of CCE, Nagpur Vs Ultratech Cement Ltd. reported in 2010 (260) ELT 369 (Bom.) the Hon’ble Bombay High Court by following the judgment in the case of Coca Cola India Pvt. Ltd. has held as follows:

“38. We concur with the above decision of this Court in the case of Coca Cola India Pvt. Ltd. (*supra*). However, in that case, this Court has also held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit. That observation of the Division Bench is made in the context of a service which is held to be integrally connected with the business of manufacturing the final product. Therefore, the observation of the Division Bench in the case of Coca Cola India Pvt. Ltd. (*supra*) has to be construed to mean that where the input service used is integrally connected with the business of manufacturing the final product and the cost of that input service forms part of the cost of the final product, then credit of service tax paid on such input service would be allowable.”

4.6 The principle laid down in the above judgments equally applies to section 16 of CGST Act, 2017 and therefore, the promotional/marketing items sent to their showrooms & to their distributor/dealer’s showrooms to use in promoting their brands and marketing their products, will form integral part of their business and



amounts use of such goods in business or furtherance of the applicant's business. Therefore, the same qualify as "input" in terms of section 2(59) of CGST Act, 2017 and GST paid on the same is entitle to avail as "input tax credit" in terms of section 16 of CGST Act. 2017.

4.7 The applicant submitted that promotional/marketing items using by them at point of purchase i.e. their showrooms or to their distributor/dealer's showrooms is to promote their brands and made known the range of products manufactured by them. The applicant is not simply distributing the said promotional/marketing items at free of cost to their distributors/dealers, they are distributing the same with obligation to promote their brand and market their products by using the said promotional/marketing items, which cannot be construed as "gift" and made applicable section 17(5)(h) of CGST Act, 2017. For better appreciation, the provision of section 17(5)(h) of CGST Act, 2017 is extracted hereunder:

"Section 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).....

(b).....

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;"

It is clear from the above provision that wherein input tax credit availed goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples, then to that extent the input tax credit should restricted.

4.8 The applicant submits that they are not disposing the said promotional/marketing items by way of gift. They are sending such promotional/marketing items without transferring the title over the same to their show rooms and to their distributor/dealer's with obligation to promote their brand and market their products by using such promotional/marketing, which will not be used by their distributors/dealers for their personal use.

4.9 The Applicant submits that there is a difference between in disposing of goods by way of gift and transferring to use those items in promotion and marketing activity. In the 'gift' there will not be any further obligation on the part of the person who accept the gift but whereas in sending the said promotional/marketing items by the applicant to their distributors/dealers, there is an obligation on the part of distributors/dealers to promote the brand & products of the applicant by using those promotional/marketing items. As per the agency/dealership agreements entered between the applicant and their dealers, it is the obligation on their part to promote the brands of the applicant and market the products of the applicant.

4.10 The applicant submits that under the delivery challan they are sending the said promotional/marketing products at their point of purchase i.e. their showrooms and their distributor/dealers' showroom to use it in promoting their brands and market their products and they are not transferring the title of the said items. The said promotional/marketing items used in the showrooms to promote their brand and market their products at point of purchase are also one kind of advertisement of brand and products. Once the advertisement service used in promoting the brand & marketing the goods qualify as "input service" in terms of section 2(60) of CGST Act, 2017, the goods used in promoting the brand and marketing the products also qualify as "input" in terms of section 2(59) of CGST Act, 2017 and consequently the applicant is entitled to avail the GST paid on the said promotional/marketing items as "input tax credit" in terms of section 16 of CGST Act, 2017.

4.11 Without prejudice to the above submissions the applicant submit that in respect of the promotional/marketing items to their own showrooms there is neither "supply" nor there is gift and hence applying the provision of section 17(5)(h) of CGST Act, 2017 and apportioning the input tax credit does not arises.

4.12 In view of the above submissions, the promotional/marketing items sent to their showrooms & to their distributor/dealer's showrooms to use in promoting their brands and market their products will amount to use of said goods in business or furtherance of the applicant's business. Therefore, the same qualify as "input" in terms of section 2(59) of CGST Act, 2017 and GST paid on the same is entitled to avail as "input tax credit" in terms of section 16 of CGST Act. 2017.

5. The applicant has filed the present application under Section 97(1) of the Karnataka State Goods & Services Act, 2017 ("KGST Act") read with Rule 104(1) of the Karnataka State Goods & Services Rules, 2017 ("KGST Rules").

5.1 Section 97(2)(d) of the KGST Act provides that the question in respect of which Advance Ruling is sought shall be inter alia in respect of admissibility of input tax credit of tax paid or deemed to have been paid.

5.2 In the instant application for advance ruling, the applicant seeks to determine the admissibility of input tax credit of tax paid or deemed to have been paid on promotional/marketing items procured and sent to point of purchase i.e. their showrooms and their dealers' showroom. The applicant therefore submits that question on which the present advance ruling is sought fulfills the requirement under Section 97(2)(d) of the KGST Act.

5.3 In the above factual position and based on the above submissions, the applicants requests that a ruling may be given that the promotional/marketing items sent to point of purchase i.e. their show rooms and distributors/dealers to use the same in promoting their brands and market their products will qualify as "input" in terms of section 2(59) of CGST Act, 2017 and GST paid on the same is entitled to avail as "input tax credit" in terms of section 16 of CGST Act. 2017.



6. The applicant has filed additional submissions as follows:

6.1 The Applicant submitted that to promote their brands and market their products at the point of purchase i.e. Exclusive Brand Operators show rooms (for short "EBO show rooms") and retail show rooms, the applicants are using the various promotional products and marketing items and on which the Applicant have paid the applicable GST.

6.2 Display Items

The applicant submitted that to display their products at the point of purchase and to effectively made known their range of products to the ultimate customers, the applicant is procuring DISPLAY ITEMS such as stands, hangers, cupboards, ladders etc. and sending those to the Exclusive Brand Operators and Retailers to display their branded products at the show rooms.

6.3 Display Boards for Retail Boarding

The applicant submitted that to promote their products at retail level and to help the customers in identifying the exclusive brand operator & retailer of the applicant's brand in the market, the applicant is getting manufacture of the DISPLAY BOARDS with their brand logo and name of the exclusive brand operators and retailers. The same will be displayed at the outside show rooms of their exclusive brand operators and retailers.

6.4 Uniforms

The applicant submitted that to promote their brands and to create an identity of their brands and to help the customers in recognizing sales girls & boys of their brands at the point of purchase i.e. showrooms of their exclusive brand operator & retailers and at the exhibition centers, the applicant is providing the UNIFORMS to the sales girls and boys of their brands.

6.5 Posters

The applicant submitted that for promotion of their newly introduced products and to get the attractions of the customers at the point of purchases, the applicant gets printed the POSTERS in respect of the newly introduced products and provides the same to their exclusive brand operators and retailers to post the same at show rooms so that customers will know about their newly introduced range of products.

6.6 Gifts

The applicant submitted that to enhance their goodwill of their brands, develop B2B relationship, raise brand awareness and maintain customers loyalty, the applicants procures the pens, dairies, table calendars etc. with affixation of their brands and distributes the same as GIFTS to their exclusive brand operators



and retailers, staffs or sales girls/boys works at point of purchase and the customers..

6.7 Outdoor Hoarding

The applicant submitted that by targeting the audiences and to get their attention, the applicant is advertising their brands and products in the hoarding fixed at the highways and major thoroughfares, thus, increases the possibility of being seen by a great number of people all throughout the day. For such advertisement, the applicant is getting printed the flex with brand and products and with such printed flex the applicant is advertising.

6.8 Carry Bags

The applicant submitted that to simplify the customer's ordering process and to give customers and prospective customers, a general idea about the products offered by the applicant, the applicant get it printed the catalogues and pamphlets and distributes the same to their Exclusive Brand Operators and Retailers. To create unique identity of the brand, increase brand awareness and make the brands more popular, the applicant is getting them manufactured with logo of their brands and distribute the same to their Exclusive Brand Operators and Retailers to use in the stores.

6.9 The applicant submitted that to promote their brands at point of purchase level, they procure various promotion items such as display items, display boards, uniforms, posters, gifts, catalogues & pamphlets and carry bags etc. on payment of applicable GST and distribute the same under challans to their Exclusive Brand Operators and Retailers to use in the brand promotion. Since the brand promotion being in furtherance or in the course of their business, the applicant, treating the said promotional item as "input" as defined in section 2(59) of CGST Act, 2017, is availing the GST paid on the same as "input tax credit" in terms of section 16 of CGST Act, 2017.

7. Further the applicant submitted that their Exclusive Brand Operators and Retailers are obligated to promote their brands and at the instructions of the applicant they use the said promotional items in promoting the brands at the stores level. Since no ownership of the said promotional items have been transferred and same not being permitted for their personal use of the Exclusive Brand Operators and Retailers, there is no restriction for the applicant to avail the GST paid on such promotional items as "input tax credit".

8. In the above factual position and submissions made above, the applicant requests that a ruling may be given that the promotional items procured and used at the point of purchase in promoting their brands and market their products will qualify as "input" in terms of section 2(59) of CGST Act, 2017 and GST paid on the same is entitle to avail as "input tax credit" in terms of section 16 of CGST Act.

2017.



PERSONAL HEARING: / PROCEEDINGS HELD ON 28-07-2020

9. Sri. Kamalakara, Cost Accountant& the duly authorized representative alongwith applicant appeared for personal hearing proceedings on 28-07-2020 before this authority and reiterated the submissions already made.

FINDINGS & DISCUSSION

10. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by him when he appeared for the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

10.1 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

11. The first issue before us is the promotional products and materials and marketing items, which are used in promotion of the brand and marketing of their products, are Inputs as defined in section 2(59) of the CGST Act 2017 or not. In this regard, the following are noted:

11.1 The applicant is procuring various materials classified as promotional material and is distributing them to the distributors and franchises free of cost. The applicant states that they are supplied free of cost and are to be used only for the promotion of their brand and products in the showrooms of the distributors and retailers. They have stated that they are supplying uniforms for the sales personnel of the distributors and franchisees to be worn by them at their outlets and even this is for sales promotions. The applicant has classified them under the following heads

- a) Display Items
- b) Display Boards for Retailers
- c) Uniforms for Sales Personnel
- d) Posters
- e) Gifts for brand operators, retailers, staff and sales personnel at outlets and also to customers
- f) Outdoor Hoardings
- g) Carry bags



11.2 The contention of the applicant is that these are all procured by them either as goods or as services in the course or furtherance of business and hence are inputs and input services.

11.3 The applicant states that some of the materials, like display boards, Posters, Outdoor hoardings, remain in his own account and are treated as capital goods. There is no transfer of ownership of these materials to his franchisees, distributors and retailers and hence there is no sale involved in them. Further, it is also seen that these materials have no direct correlation on the amount of sales effected and are only for display in the premises of the franchisees, distributors and retailers and they remain the property of the applicant. The applicant does not show any evidence of these returned back after their effective use.

11.4 Further, the applicant states that uniforms, gifts and carrybags are provided to the retailers, distributors and franchisees to be used by them or give them free of cost to the purchasers of their materials. Hence they are promotional materials to attract and encourage sales of their goods and hence are expenses in his accounts. In this case, the goods do not remain in the account of the applicant and is transferred to the accounts of the retailers, distributors and franchisees, with a condition that they have to be given free of cost to the ultimate consumers, i.e. sales personnel in case of uniforms, personnel and customers in case of gifts and to the customers in case of carry bags.

12. The issues in the above is what is the treatment to be given to those materials distributed to others. The analysis of the above shows clearly that there are two types of materials,

- a. those which are delivered to the distributors, franchisees and retailers but the ownership lies with the applicant, but the same are used in their premises (hereinafter referred to as "**non-distributable goods**")
- b. those which are delivered free of cost to the distributors, franchisees and retailers to be distributed to their employees and customers (hereinafter referred to as "**distributable goods**")

Regarding the first one, i.e. other non-distributable goods which are given to the distributors, franchisees and retailers, the following are noted:

12.1 It is seen that these goods are not transferred out of the accounts of the applicant and remain in the accounts of the applicant as assets. These are returnable items and the applicant has not provided any proof of the fact they are returned back to the applicant and disposed by the applicant at the end of its period of usage. Hence, two scenarios emerge,



(a) the goods are returned back to the applicant – wherein the applicant either

(i) takes it into account for further usage

(ii) destroys the same as not usable

(b) the goods are not at all returned and are written off.

12.2 In all the scenarios, the applicant uses these goods till the goods are usable for the promotion of his business and claim the depreciation on the same. The applicant is capitalizing these goods and on the day of their disposal, the said goods are destroyed.

12.3 The applicant is of the opinion that these goods are covered under “input”. The term “input” is defined under clause (59) of Section 2 of the CGST Act as under:

“(59) “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business”

The term “capital goods” is defined in clause (19) of section 2 of the GST Act as under:

“(19) “capital goods” means good, the value of which is capitalized in the books of account of the person claiming input tax credit and which are used or intended to be used in the course or furtherance of business;”

Since the applicant is retaining the ownership on these materials and are not a direct cost of the products sold, they can be treated as capital goods and hence needs to be capitalized in his books of accounts. Hence they cannot be treated as “input” as the term excludes capital goods, as claimed by the applicant.

12.4 On the question, whether input tax credit can be availed on these capital goods, the following points are observed:

The term “input tax credit” is defined in clause (63) of section 2 of the GST Acts, as under:

“(63) “input tax credit” means the credit of input tax;

The term “input tax” is defined in clause (62) of section 2 of the CGST Act, 2017 as under:

“(62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes –



(a) The integrated goods and services tax charged on import of goods;

(b) The tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) The tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) The tax payable under the provisions of the respective State Goods and Services Tax Act; or

(e) The tax payable under the provisions of section (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

But does not include the tax paid under the composition levy;"

From the above, the taxes paid by the applicant on the supply of goods or services or both to him qualify as input tax credit.

12.5 Further section 16 of the GST Acts provides for the eligibility for taking/availing input tax credit. Since the applicant has used or intended to use the goods and services procured in the course or furtherance of business, the applicant is entitled to take input tax credit, subject to other provisions of the Act and there is no blockage attributable to section 17 (1) as the applicant has used the goods in the course or furtherance of business.

12.6 Section 17(5) of the CGST Act, reads as under

"(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)

(f) goods or services or both used for personal consumption

(g) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

(h). . . . "

The non-distributable goods are used by the applicant for the purpose of their business and at the time of such writing off or loss or destroyed, the input tax credit claimed on such goods are to be reversed. The applicant has not made any submissions regarding what is ultimately done to these goods after the end of period of usage. Assuming that they are written off or destroyed or lost, the input tax credit claimed under section 16 needs to be reversed as per Rule 43 of the CGST Rules, 2017.



13. Regarding the **second** one, i.e. distributable goods, they are procured by the applicant and used for sales promotion. They are given free of cost and there is no consideration for such transfer. The stock register of the applicant would be credited with these materials when they are procured and debited when they are distributed and hence they would be no longer in the accounts of the applicant. Since this transfer is not for consideration, the next step is to examine if the transaction is falling under the First Schedule of CGST Act, 2017. Relevant portion of the First Schedule of CGST Act, 2017 is given below:

Activities to be treated as Supply even if made without consideration:

3. *Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course of furtherance of business:*

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

13.1 The treatment of gifts given in sales promotion are enumerated in Circular No.92/11/2019- GST dated 07.03.2019, and the related contents of the same are extracted as under:

"Subject: Clarification on various doubts related to treatment of sales promotion schemes under GST - Reg.

Various representations have been received seeking clarification on issues raised with respect to tax treatment of sales promotion schemes under GST. To ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the said Act") hereby clarifies the issues in succeeding paragraphs.

2. It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the "ITC") in relation to the said schemes are detailed hereunder:

A. Free samples and gifts:

i. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any



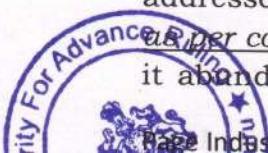
consideration. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

ii. Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC."

13.2 The applicant, in the instant case, disposes / issues the distributable goods free of cost i.e, without any consideration to two categories i.e. Franchisees (Exclusive Show Rooms) and other shops / retailers, where all brands are sold (Retailers / All brands stores). Now we examine each category whether they become related persons to the applicant are not. In this regard we invite reference to Section 15(5)(c) of the CGST Act 2017 which stipulates that "persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other, shall be deemed to be related".

13.3 In the instant case, with regard to the first category i.e. the Franchisees of the applicant are associated in the business of one another and hence are related persons. It is an admitted fact that the applicant disposes the distributable goods by way of gifts and free supplies to promote business and hence are to be treated as supplies in terms of para 2 of Schedule I to the CGST Act 2017. Thus the applicant need to discharge applicable GST on such supplies and thereby is entitled to avail input tax credit on the said supply of goods.

13.4 The second category is that of all brands stores and they do not fall under the related persons to the applicant. Further the above Circular also addresses applicant's contention that items supplied for promotion of the brand is as per contractual obligation & hence can't be called as gifts. The Circular makes it abundantly clear that these items would be called gifts. Hence in this case,

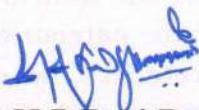


since the persons to whom the distributable goods are given are not related parties and are distinct persons and are not employees of the applicant, the transaction is not coming under the scope of supply and hence the applicant is not eligible to claim input tax credit on the same.

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

R U L I N G

1. The ITC on GST paid on the procurement of the "distributable" products which are distributed to the distributors, franchisees is allowed as the said distribution amount to supply to the related parties which is eligible to GST. Further the said distribution to the retailers for their use cannot be claimed as gifts to the retailers or to their customers free of cost and hence ITC of GST paid on such procurement is not allowed as per Section 17(5) of the GST Acts.
2. The GST paid on the procurement of "non-distributable" products qualify as capital goods and not as "inputs" and the applicant is eligible to claim input tax credit on their procurement, but in case if they are disposed by writing off or destruction or lost, then the same needs to be reversed under Section 16 of the CGST Act, 2017 read with Rule 43 of the CGST Rules, 2017.

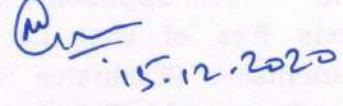

(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009

Date : 15-12-2020


(Mashhood Ur Rehman Farooqui)

Member

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-15, Koramangala, Bengaluru.

5. Office Folder.

