

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH**

4, Vibhuti Khand, Gomti Nagar, Lucknow-

**ADVANCE RULING NO. UP ADRG-06/2022
PRESENT:**

DATED 01/07/2022

1. Shri Rajendra Kumar

Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, LucknowMember (Central Tax)

2. Shri Vivek Arya

Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/S RODEC PHARMACEUTICALS PRIVATE LIMITED C-36, Patel Nagar II, Meerut Road, Ghaziabad -201001
2.	GSTIN or User ID	09AABCR5958E1Z5
3.	Date of filing of Form GST ARA-01	05.04.2022
4.	Represented by	Shri Pavan Kumar Rastogi (CA/Authorized Representative)
5.	Jurisdictional Authority-Centre	Range-5, Division I, Ghaziabad
6.	Jurisdictional Authority-State	Ghaziabad Sector-3, Range-Ghaziabad (A)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes RBIS22020900118530

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

1. M/s RODEC PHARMACEUTICALS PRIVATE LIMITED, C-36, Patel Nagar II, Meerut Road, Ghaziabad-201001 (here in after referred to as the applicant) is a registered assessee under GST having GSTIN: 09AABCR5958E1Z5.

2. The applicant has sought advance ruling on following question-

- (1) Whether the GST paid on inputs/input services procured by us for promotional scheme are eligible for input tax credit under the GST law in terms of section 16 read with section 17 of the CGST Act, 2017?
- (2) Also, whether Input Tax Credit is admissible to us in respect of tax paid on
 - i) Services provided by the hotel including accommodation, food & beverages.
 - ii) Supply of food and beverages by outside caterer to our employees in respect of Business conference meetings.

3. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

4. As per statement of facts submitted by the applicant-

- (i) The Applicant is engaged in the business of Trading of Animal Health Products.
- (ii) their product groups are classified into Antibiotic, Anthelmintic, and Analgesic & Antipyretic, Anti-Spasmodic, Ectoparasiticide, Feed Supplement, and Progesterone.
- (iii) The products supplied by them are both taxable and exempted under the GST Act.
- (iv) they sell their products through various retail stores across the country and obtain substantial revenue .
- (v) With the objective of expanding the market share, they launched some sales promotional offers to enhance sales of their products.
- (vi) The sales promotional offers are named as "**BUMPER OFFER, WINTER BONANZA**" etc.
- (vii) The current scheme is valid from 1st January 2022 to 31st March 2022.
- (viii) This scheme is applicable for sales of health products related to animals.
- (ix) They provide fixed rewards to retailers under the schemes based on the quantity and value purchases made by retailers from sub stockiest.
- (x) They offer some free additional products along with purchase under several offers/schemes. Some examples are mentioned below for better understanding:
 - a) If a retailer purchases 1 case of CVSS (1 K.G) under the offer "*Power Bonanza*", he will get 1 Milton Double Decker lunch box absolutely free.
 - b) If a retailer purchases Antibiotics of Rs. 11,000 under the "*Winter Offer*", he will get a Maharaja Sandwich Maker or MOP with Bucket absolutely free and if the retailer purchases Antibiotics of Rs. 13,000
 - c) under the same offer, he will get a signature blanket or a ceiling fan free.
 - d) If a retailer purchases 100 vials OLONE-CEF I.U. or Hygen/Mix of Both then he will get an Electric Kettle absolutely free under the "*Combo Offer*".
- (xi) because of these kinds of offers and schemes, they have to purchase some additional products which they distribute to retailers under several offers absolutely free.
- (xii) They have to do meetings and conferences for business promotion within India and outside India. And for that, they have to book hotels, cabs and incur many other similar expenses like that.

5. The applicant has submitted their interpretation of law as under-

- (i) They had referred to various provisions of CGST Act, 2017 viz. section 2(17); sec 2(31); sec 2(59); sec 2(60), section 16 and section 17(5) (h).
- (ii) As per the provisions of sec 16 of the Act, any registered person is eligible to claim input tax credit charged on supply of goods or services or both to him which are used or intended to be used in the course or furtherance of business; the conditions specified u/s 16(2) is as under:
 - (a) The registered person should possess the tax invoice issued by the supplier.
 - (b) Registered person must have received the goods.

- (c) The tax charged in respect of such supply has been actually paid to government.
- (d) Registered person has furnished the return u/s 39 of CGST Act, 2017
- (iii) they fulfill all the above conditions and hence they are eligible to take input tax credit.
- (iv) They have placed reliance on case law of *M/s Coca Cola India Pvt. Ltd. Vs CCE Pune 2009 (8) TMI 50 (BOM HC)*.
- (v) they had launched several Sales promotion schemes titled "**Bumper Offer**", "**Winter Bonanza**", "**Power Bonanza**" etc. Based on the quantity and value of products purchased by the retailers, they are awarded certain rewards as per the scheme.
- (vi) they are eligible to claim input tax credit in respect of procurement of input and input services of those products which are distributed to retailers as rewards because they procure these goods and services in the course of business and it has direct nexus with the business carried on by the company
- (vii) the products like Milton Double Decker lunch box, Electric Kettle, Iron, Ceiling Fans etc. procured by them will be used in course of business by way of handing over them as rewards to eligible retailers who participated in the scheme.
- (viii) In reference to the question, bundle of services is being offered to the delegates, reference to the concept of 'composite supply' under CGST Act, 2017 is required:
- (ix) "*composite supply*" means a supply 'made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof which are naturally bundled and supplied in conjunction with ordinary course of business, one of which is a principal supply';
- (x) As per the definition, the essential conditions for a supply to qualify as composite supply can be highlighted as under:-
- 2 or more taxable supplies of goods or services or both.
 - The taxable supplies should be naturally bundled.
 - The taxable supplies should be supplied in conjunction with each other.
 - One taxable supply should be a principal supply.
- (xi) Education Guide issued by CBEC in the year 2012 is referred which provided that whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business.
- (xii) Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –
- The perception of the consumer or the service receiver.
 - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.

- (e) The different elements are integral to one overall supply if one or more is removed, the nature of the supply would be affected.
- (xiii) They procure various supplies during the course of conferences and meetings including the following:
- Services by hotel including accommodation, conference venue and food & beverages
 - Supply of food and beverages by outside caterers.
- (xiv) The hotel will be providing a bouquet of Services to the applicant like accommodation for the delegates, availability of conference hall and Food & beverages.
- (xv) The above bundle of services shall qualify as a composite supply by the hotel where accommodation service shall be the principal supply.
- (xvi) Input Tax Credit of CGST and SGST charged by the hotel on the composite supply of accommodation service shall be available to them since such supply will be used in course of business and it is an eligible credit in terms of Section 16 of CGST Act, 2017.
- (xvii) In relation to input tax credit on food and beverages supplied by outside caterers, Section 17(5) provides that ITC of tax paid on food and beverages shall be available to the applicant because the applicant will use such inward supply as an element of an outward supply for meeting and conferences which will create a higher Sale.
- (xviii) hence, the composite supply provided by the supplier to us shall be treated as a supply of service of organization of conference & meetings.
- (xix) They placed reliance on the case laws of Ms. All Rajasthan Corrugated Board and Box Manufacturers Association (GST AAR Rajasthan)

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Deputy Commissioner, CGST Div I, Ghaziabad vide his letter C.No.V(30)/Tech GZB/D-1/AAR/16/2022/541 dated 13.05.2022 has submitted that-

(a) the GST paid on inputs/input services procured for promotional scheme are not eligible for input tax credit under GST law on following grounds-

(i) Section 17(5)(h) of the CGST Act, 2017 stipulates that the input tax credit is not available in respect of the following-

Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

(ii) the Circular No. 92/11/2019-GST dated 07.03.2019 clarified in Para (A)(ii) 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 gift or free samples distributed without any consideration.

(iii) the AAR Karnataka vide Advance Ruling No. KAR ADRG 28/2019 in the case of M/s Surfa Coats (India) Pvt. Ltd has ruled as under-

"The applicant is not eligible to avail input tax credit on the inward supplies of goods and services which are attributable to the incentives provided in the form of gifts of goods and services to the painters and dealers and other persons under CGST/SGST/IGST Act.

(b) the input tax credit on services provided by the hotel including accommodation, food & beverages, on supply of food and beverages by outside caterers to employees in r/o Business conference, meetings are not admissible on following grounds-

(i) Section 17(5)(b)(i) of CGST Act, 2017 excludes input tax credit of “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) the AAR Haryana vide Advance Ruling No. HAR/HAAR/R/2019-20 dated 04.02.2020 in case of M/s Musashi Auto Parts Pvt. Ltd held that input tax credit is not available with respect to canteen services provided by the employer to their employees and on business promotion expenses.

7. The applicant was granted a personal hearing on 27.06.2022 which was attended by Shri Pavan Kumar Rastogi, CA/Authorized representative. During personal hearing, he reiterated the submissions made in the application of advance ruling and requested to decide the case accordingly.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the ‘CGST Act’.

9. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(d) of the CGST Act 2017 being a matter related to admissibility of input tax credit of tax paid or deemed to have been paid. We therefore, admit the application for consideration on merits.

10. We observe that the applicant has sought advance ruling on the issue-

(1) *Whether the GST paid on inputs/input services procured by us for promotional scheme are eligible for input tax credit under the GST law in terms of section 16 read with section 17 of the CGST Act, 2017?*

(2) *Also, whether Input Tax Credit is admissible to us in respect of tax paid on*

i) Services provided by the hotel including accommodation, food & beverages.

ii) Supply of food and beverages by outside caterers

to our employees in respect of Business conference meetings.

11. We find that the applicant is engaged in the business of trading of Animal Health Products. The applicant have introduced sales promotional offers named as “**BUMPER OFFER, WINTER BONANZA**”. Under the said scheme, they offer some free additional products (such as lunch box, sandwich maker etc) along with purchase under several

offers/schemes. The applicant has sought ruling on admissibility of input tax credit involved on procurement of said promotional items and also on meetings and conferences-for business promotion within India and outside India. The applicant has also submitted that promotional items distributed to retailers are to be treated as inputs/input services used in furtherance of business and the promotional materials are not gifts and are not covered under Section 17(5)(h) of the CGST Act, 2017.

12.1 The eligibility of input tax credit is governed by the provisions of Section 16 and Section 17 of the CGST Act, 2017. Section 16(1) of the CGST Act, 2017 reads as under-

Section 16 (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.

12.2 Section 17(5) of the CGST Act, 2017 blocks/restricts certain input tax credits. The same states as under:-

Section 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).....

.....

(g) Goods or services or both used for personal consumption;

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

12.3 As per the Section 16(1) of the CGST Act, 2017, every registered person is eligible to credit of input tax charged on the goods/services supplied to him and which are intended to be used in the course or furtherance of his business. The applicant has contended that the goods are procured by them for distribution as a reward in the promotional schemes with the intended use in furtherance of business. The applicant have thus claimed that the conditions under Section 16 stands fulfilled.

12.4 But Section 17(5) of the CGST Act, 2017 deals with the situations wherein, the tax paid on inputs/input services are not available as Input Tax Credit even when such goods/services are procured for furtherance of business. The said section starts with 'Notwithstanding anything contained in sub section (1) of section 16'. If a provision contains a clause "notwithstanding anything contained in this Act" or "notwithstanding anything contained in some particular provision in the Act", the said clause is known as a non-obstante clause. This is always inserted at the beginning of a provision with the objective of giving the provision an overriding effect over the statute or provision mentioned in the non-obstante clause. It essentially means that in spite of the provision or Act mentioned in the non-obstante clause being in force, the provision that comes after that would be fully enforced without being restricted by the provision or Act mentioned in the non-obstante clause.

12.5 As Section 17(5) contains a non obstante clause, which means even if Section 16 allows the credit, as conditions for taking of credit are satisfied, but Section 17(5) shall block the credit in respect of certain cases. Moreover, Section 17 (5) is a specific provision. It is an established principle that specific provisions prevail over general provisions. If there is

dispute between Section 16 and Section 17(5), then Section 17(5) over rides Section 16. In other words, if something qualifies for ITC under section 16 but is blocked from ITC under section 17(5) then ITC would not be available.

12.6 Section 17(5)(g) of the CGST Act, 2017 restricts the ITC on the goods/services procured for personal consumption, even if those goods/services are procured in the furtherance of business. The goods procured for disbursement in the scheme by the applicant are Laptop Bag, Sandwich Maker, Electric Kettle, Blanket, Lunch Box, Mixer grinder etc which are distributed to the retailers for their personal consumption. As the credit of taxes paid on the goods/services for personal consumption is explicitly restricted and the goods distributed to retailers under promotional scheme are used by the retailers for personal consumption, the applicant is ineligible to take input tax credit on the inward supply of these goods. The Parliament in its wisdom did not place any further restriction as to who use the goods for personal consumption and it is obvious reason that under the GST law the flow of input tax credit is allowed until its consumption and hence such personal consumption be by the applicant or by its retailers would disentitle them to avail such input tax credit.

12.7 Further, as per Section 17 (5)(h), goods disposed of by way of gift are not eligible for ITC. The term 'gift' is not defined in CGST Act, the meaning of the term 'gift' as defined in the Gift Tax Act, is as below:

“(xii)”gift” means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money’s worth,

12.8 The promotional scheme was extended by the applicant at their own will voluntarily without any consideration in money. The goods distributed under promotional scheme are not in the nature of discounts to the products but are in the nature of personal consumables and qualifies to be termed as gifts. The 'Scheme Circular' provided by the applicant alongwith Form GST ARA-01 also contains the words 'Gift Option 1', 'Gift Option 2' and 'Gift Option 3'. Further, the gift items are fixed based on the retailers purchase of the targeted products as per Annexure C of the Form GST ARA-01 and not on the sales made by the retailers. Moreover, the rewards are handed out to the successful retailers and no tax invoice/any taxation document are raised for such handout. Also, the goods are distributed on fulfillment of the conditions of the scheme, with no separate consideration, therefore, the distribution of goods and services to the retailers as per the Scheme is not a 'Supply' as defined under Section 7 of the CGST Act. Section 17(5)(h) expressly restricts ITC on such gifts, even if they are procured in the course of furtherance of business. Therefore, it is clear that the tax paid on the goods procured for distribution as rewards extended by the applicant in the 'Bumper Offer, Winter Bonanza' scheme or any other such scheme is not available to them as ITC in as much as such rewards have been extended as gifts on purchase of animal health products.

12.9. As such, the answer of the first question raised by the applicant in the application of advance ruling is negative in our view.

13. Now we proceed to examine the second question regarding admissibility of input tax credit in respect of tax paid on (i) Services provided by the hotel including accommodation, food & beverages and (ii) Supply of food and beverages by outside caterers to their employees in respect of Business conference meetings

13.1 The applicant has submitted that the hotel will be providing a bouquet of Services to them like accommodation for the delegates, availability of conference hall and Food &

beverages. The above bundle of services shall qualify as a composite supply by the hotel where accommodation service shall be the principal supply. Input Tax Credit of CGST and SGST charged by the hotel on the composite supply of accommodation service shall be available to them since such supply will be used in course of business and it is an eligible credit in terms of Section 16 of CGST Act, 2017.

13.2 We find that Section 17(5)(b) reads as under-

(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) 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 and services or both shall be available 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;

13.3 From the co joint reading of Section 16 and 17(5)(b) of the Central Goods and Services Tax Act, 2017, it is observed that the ITC with respect to food and beverages and outdoor catering shall be available only 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.

13.4 We find that the applicant is engaged in the business of trading of animal health products and not in the business of provision of food or catering.. Even if the provision of food and catering had been in the course of furtherance of business, the applicant is not entitled to the input tax credit in light of the express bar provided under Section 17(5)(b)(i) of the CGST Act, 2017.

13.5 We find that the applicant has placed reliance on the order of the Authority of Advance Ruling of Rajasthan in case of Ms. All Rajasthan Corrugated Board and Box Manufacturers Association (GST AAR Rajasthan. In the said case, the applicant was engaged in providing service in the form of technical Seminars, access to exhibition, hotel room Accommodation, cultural programs, lunch & dinner, airport Pick Up & Drop and a bundle of services were provided to the delegates and exhibitors of a composite supply having description 'Events, exhibitions, conventions and trade shows organizations and assistance services' and "Sponsorship services and brand promotion services" and for providing outward supply of said services, the inward supply of Services provided by the hotel including accommodation, food & beverages. and Supply of food and beverages by outside caterers were used by the applicant. As such, the facts of the said case are entirely different and not applicable to instant case.

13.6 As such, the answer of the second question raised by the applicant in the application of advance ruling is also negative in our view.

14. In view of above discussion, we pass the following ruling-

RULING

15.

Question (1)- Whether the GST paid on inputs/input services procured by us for promotional scheme are eligible for input tax credit under the GST law in terms of section 16 read with section 17 of the CGST Act, 2017?

Answer (1)- Answered in negative.

Question (2)- Also, whether Input Tax Credit is admissible to us in respect of tax paid on

- i) Services provided by the hotel including accommodation, food & beverages.
- ii) Supply of food and beverages by outside caterers to our employees in respect of Business conference meetings.

Answer (2)- Answered in negative.

16. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)

Member of Authority for Advance Ruling


(Rajendra Kumar)

Member of Authority for Advance Ruling

✓ To,

M/s RODEC PHARMACEUTICALS PRIVATE LIMITED,
C-36, Patel Nagar II, Meerut Road,
Ghaziabad -201001

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Excise, CGO Complex, Kamla Nehru Nagar, Ghaziabad- 201002. .
4. The Deputy/Assistant Commissioner, CGST & C. Excise, Division-I, CGO Complex, Kamla Nehru Nagar, Ghaziabad- 201002. .
5. Through the Additional Commissioner, Commercial Tax, ~~Zone-1, Ghaziabad,~~ Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.