

## **ITC not available on promotional items distributed FOC to their distributors/franchisees**

The Hon'ble AAR, Karnataka in ***Re: M/s Page Industries Limited [Advance Ruling No. KAR ADRG 54/2020 dated December 15, 2020]*** held that assessee is in essence not eligible to claim input tax credit (“ITC”) on promotional products/materials and marketing items used in promotion of their brand and marketing their products which is distributed to their distributors/franchisees free of cost (“FOC”).

### **Facts:**

M/s Page Industries Limited (“**Applicant**”) is 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. The Applicant market or sell their products through their own outlets and also through their distributors or dealers.

Further, to promote their brands and to market their products, the Applicant is availing the services of advertisement agencies such as ads in the print media, electronic media, outdoor advertising etc. The Applicant 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 avilment of such advertisement services & procurement Promotional Products / marketing materials, the Applicant is paying applicable GST thereon.

Two types of materials are being distributed to franchisees (exclusive showrooms)/distributors/ retailers(brand stores):

- 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 (“**non distributable goods**”)
- Those which are delivered free of cost to the distributors, franchisees and retailers to be distributed to their employees and customers (“**distributable goods**”)

### **Issue:**

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 Central Goods and Services Tax Act, 2017 (“**CGST Act**”) and GST paid on the same can be availed as ITC in terms of Section 16 of the CGST Act?

Held:

The Hon'ble AAR, Karnataka in **Advance Ruling No. KAR ADRG 54/2020 dated December 15, 2020** held as under:

- 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. Further, the Applicant states that uniforms, gifts and carry bags 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.

Non-distributable goods-

- The taxes paid by the Applicant on the supply of goods or services or both to him qualify as ITC. Further, Section 16 of the CGST Act provides for the eligibility for taking/ availing ITC. 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 ITC, subject to other provisions of the CGST Act and there is no blockage attributable to Section 17 of the CGST Act as the Applicant has used the goods in the course or furtherance of business. 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 ITC 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 ITC claimed under Section 16 of the CGST Act needs to be

reversed as per Rule 43 of the Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”).

Distributable goods-

- 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. 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).
- 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. Thus the Applicant need to discharge applicable GST on such supplies and thereby is entitled to avail ITC on the said supply of goods. The second category is that of all brands stores and they do not fall under the related persons to the Applicant. Further the ***Circular No.92/ 11/2019- GST dated March 7, 2019 (“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 ITC on the same.

**Comment:**

It is be noted that the goods and services that are bought by the organization under various promotional schemes are bought by them in order to increase their sales and promote their brand and their cost is already taken into account by the organizations while finalizing the pricing of the items manufactured by the Company. Therefore, these sales promotion goods or services cannot be regarded as gifts as per the provision of

Section 17(5)(h) of the CGST Act which denies ITC on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Thus, promotional items bought whether or not distributable may not be treated as gifts within the meaning of Section 17(5)(h) of the CGST Act.

Further, AAAR, Maharashtra in M/s. Sanofi India Ltd. (**Order No. MAH/AAAR/SS-RJ/10/2019-20 dated October 22, 2019**) held that as per Section 101(3) of CGST Act no advance ruling can be issued w.r.t eligibility of ITC on the goods and services offered under various promotional schemes and as brand reminders since one member (SGST) has upheld the order of AAR and the other member (CGST) has set aside the order of the AAR in the favour of Appellant.

The Government must provide for a mechanism wherever there is denial of advance ruling when learned members of AAAR differ with each-other.

**Relevant provision:**

**Section 16(1) of the CGST Act:**

***“Eligibility and conditions for taking input tax credit.***

*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.”*

**Section 16(5)(f) and (g) of the CGST Act:**

*“(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)....”*

**Para 2 of Schedule I to the CGST Act:**

*“2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or 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.”*

We have recently released the 6<sup>th</sup> Edition of our GST Book titled **“GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES”**, in a set of 3 Volumes. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

*Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!*

This book can be ordered online at: <https://rb.gy/benrpb>

***DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.***