

Why ITC not available on promotional products distributed FOC for sales promotion?

The Hon'ble AAAR, Karnataka in **Re: M/s Page Industries Limited [Order No. KAR/AAAR/05/2021, dated April 16, 2021]** held that the promotional products/materials & marketing items which are distributed to their distributors/franchisee free of cost (“FOC”) by the assessee in promoting their brand & marketing their products can be considered as ‘inputs’ as defined in Section 2(59) of the Central Goods and Services Tax Act, 2017 (“CGST Act”). However, the GST paid on the same cannot be availed as Input Tax Credit (“ITC”) in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act.

Facts:

M/s Page Industries Limited (“**the Appellant**”) 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 Appellant 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 Appellant is availing the services of advertisement agencies such as ads in the print media, electronic media, outdoor advertising etc. The Appellant is also procuring the promotional products and marketing materials for use in displaying their products at the point of purchase i.e. Exclusive Brand Operator’s (“**EBO**”) showrooms and retail showrooms. On procurement of such advertisement services & procurement promotional products / marketing materials, the Appellant is paying applicable GST thereon.

This Appeal has been filed against the ruling passed by AAR, Karnataka vide **Advance Ruling No. KAR ADRG 54/2020 dated December 15, 2020**, wherein in essence it was held that the Appellant is not eligible to claim 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 FOC.

Issues:

Whether ITC is available on the promotional products/marketing items used by the Appellant in promoting their brand & marketing of their products.??

Held:

The Hon'ble AAAR, Karnataka in **Order No. KAR/AAAR/05/2021, dated April 16, 2021** held as under:

- Noted that, the provision of promotional materials FOC by the Appellant to the franchisees and distributors is neither covered within the scope of a taxable supply as defined in Section 7 of the CGST Act nor is it a supply covered under the ambit of Schedule I of the CGST Act. The activity of providing the promotional items can be termed as an 'non-taxable supply' as defined in Section 2(78) of the CGST Act. Thus, ITC shall not be available by virtue of the provisions of Section 17(2) of the CGST Act.
- Observed that, with regard to the promotional items such as gondola racks, wall shelves and panels, POP items etc. ("**non-distributable goods**"), there is a contractual obligation on the part of the Appellant to provide their EBO/franchisees and distributors promotional materials to enhance the sales of their products and the same will continue to be used by the EBO and distributors as long as the agreement is in force. Therefore, the title of the promotional items remains with the Appellant and is not transferred to the EBO or the distributor and such non-distributable goods are not capitalised in the Appellant's books of accounts but are always treated as revenue expenditure and therefore, cannot be considered as 'capital goods' but 'inputs' which are used in the course or furtherance of business.
- Further observed that, in case of promotional items such as carry bags, calendars, dairies, pens, etc. ("**distributable goods**") with the brand name embossed/engraved that are distributed FOC to the to the EBOs/distributors/retailers for the purpose of giving away to customers, acquires the character of gifts, as the same is done voluntarily and without any contractual obligation or consideration, and are barred from being eligible for ITC even if they are used in the course or furtherance of business under Section 17(5)(h) of the CGST Act.
- Set aside the ruling passed by the AAR, Karnataka dated December 15, 2020.
- Held that, the promotional products/materials & marketing items used by the Appellant in promoting their brand & marketing their products can be considered as 'inputs' as defined in Section 2(59) of the CGST Act and the goods procured on payment of GST which are disposed of by way of gifts are barred from being eligible for ITC in terms of Section 17(5)(h) of the CGST Act, even if they are used in the course or furtherance of business. Therefore, the ITC is not eligible on the promotional items distributed as give away items on the grounds that the same is blocked by virtue of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act.

Our Comments:

In our view, goods distributed to distributors free of cost is a sales promotion expense in the hands of the Companies. It is be noted that the goods and services that are distributed

by the companies under various promotional schemes to its distributors are done 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 should not be regarded as gifts under 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.

Relevant Provisions:

Section 2(59) of the CGST Act:

“(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 ”

Section 2(78) of the CGST Act:

“(78) “Non taxable Supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act”

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 17(2) and (5)(h) of the CGST Act:

“(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(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:

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

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.”

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