

Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as "goods disposed of by way of gift" and Input Tax Credit ("ITC") on the same would be restricted as provided under the Section 17(5)(h) of the CGST Act, 2017? HELD The applicant's obligation to issue gold coins and white goods to the dealers/ customers upon achieving the stipulated lifting of the material/ purchase target during the scheme period would not be regarded as "goods disposed of by way of gift" and Input tax credit would not be restricted under the Section 17(5)(h) of the CGST Act, 2017. (2) Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No. 1 of the Schedule-I to the CGST Act, 2017? HELD The applicant's obligation to issue gold coins and white goods to the dealers/ customers upon achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No. 1 of the Schedule I to the CGST Act, 2017 (3) Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a supply under Section 7 of the CGST Act, 2017? HELD The applicant's obligation to issue gold coins and white goods to the dealers/ customers upon achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a supply under section 7 of the CGST Act, 2017

Advance Ruling No. KAR ADRG 27/2023, Dated 24th August, 2023

**THE AUTHORITY FOR ADVANCE RULINGS**

**IN KARNATAKA**

**GOODS AND SERVICES TAX**

**VANIJYA THERIGE KARYALAYA, KALIDASA ROAD**

**GANDHINAGAR, BENGALURU - 560 009**

**Present:**

1. Dr. M.P.Ravi Prasad

Additional Commissioner of Commercial Taxes ..... Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect Taxes .....Member (Central )

1.	Name and address of the applicant	M/s. Orient Cement Limited, Village Itaga, Malkhed Road, Taluka Chittapur, Kalaburagi-585292.
2.	GSTIN or User ID	29AABCO5420A1ZX
3.	Date of filing of Form GST ARA-01	13.12.2022
4.	Represented by	Sri T.R. Venkateswaran, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Belagavi GST Commissionerate, Gulbarga Division
6.	Jurisdictional Authority -State	Commercial Tax Officer,

		SGSTO 522, Sedam
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No. DC 2912220039988 Dated 10.12.2022

## **ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND**

### **UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Orient Cement Limited, Village Itaga, Malkhed Road, Taluka Chittapur, Kalaburagi-585292 (hereinafter referred to as 'The applicant'), having GSTIN 29AABCO5420A1ZX have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of 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 is a Public Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively) and is engaged in manufacturing of cement.

3. The applicant has sought advance ruling in respect of the following question:-^

1. Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as "goods disposed of by way of gift" and Input Tax Credit ("ITC") on the same would be restricted as provided under the Section 17(5)(h) of the CGST Act, 2017?

2. Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No. 1 of the Schedule-I to the CGST Act, 2017?

3. Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a supply under Section 7 of the CGST Act, 2017?~

**4. Admissibility of the application:** The question is about the "admissibility of input tax credit of tax paid or deemed to have been paid" and "Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term " and hence is admissible under Section 97(2)(d) and 97(2)(g) of the CGST Act 2017.

**5. BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they are engaged in the business of manufacture of Ordinary Portland Cement ('OPC') & Pozzolona Portland Cement (TPC\*). They incur various marketing and distribution expenses. The said expenses are incurred with a view to promote their brand/products and enhance its sales.

5.2 The applicant states that in order to achieve sales and marketing objectives, they have launched various target/performance based - discount schemes/white goods scheme for their dealers. These schemes help the dealers to be motivated to achieve a specified target and in turn helps the company to achieve their sales targets or higher sales.

5.3 Under various schemes, the Company distributes different products among its dealers. Further, the Company also offers various promotional schemes "Monthly/Quarterly Quantity Discount Scheme", etc. The said sales promotion scheme helps the company in achieving their sales and collection targets.

5.4 Similarly the company offers promotional schemes known as "Dealer White Goods Scheme" . The said sales promotion scheme helps the company in achieving their sales targets.

5.5 As part of the "Monthly/Quarterly Quantity Discount Scheme", specific slabs have been identified for different markets/locations specifying the quantity to be purchased, on a monthly basis, by the dealer in order to avail the benefit of the scheme.

5.6 Further, below are the additional guidelines in respect of the Monthly QD scheme:-^

- a. Applicable on all products i.e. Strongcrete, PPC & OPC clubber together.
- b. The disbursement shall be made in the form of Gold coin on Quarterly basis.~

5.7 Further, below are the additional guidelines in respect of the Quarterly QD scheme:-^

- a. Dealers with >90 days outstanding shall not be eligible for this discount.
- b. On Strongcrete volume Rs.5 per Bag will be disbursed in the form of Gold.
- c. Disbursement shall be made in the form of credit notes on Quarterly/Half Yearly / Yearly~

5.8 As per the "Monthly/Quarterly Quantity Discount Scheme", in case any dealer from Karnataka purchases 500 MT of OPC from the Company, a discount worth Rs. 13/- per bag shall be credited to his account. Higher the cement quantity purchased by the dealer, higher will be the discount earned by dealer resulting into higher eligibility of gold coins. At the end of the quarter, the Company purchases gold coins worth the total discount credited to the account of the dealer and distributes the said gold coins to the dealer as per the agreed terms of the promotional scheme. The invoice for the said gold coins is raised in the name of the Company and accordingly, ITC of the GST paid on the gold coins is claimed by the Company.

5.9 In case of "Monthly/Quarterly Quantity Discount Scheme" and "Dealer White Goods Scheme" the benefit provided to the dealer is determined based on the amount credited to the account of the dealer which in turn is based on the quantity and the grade of cement purchased by such dealer. Subsequently, to pass on the benefit of such credit lying the dealer's account, the company distributes gold coins and white goods to such dealers instead of adjusting it against the payment to be received from such dealers or issuing them credit notes.

5.10 The Applicant states that the restriction laid down in Section 17(5)(h) of the Act is applicable only in respect of goods disposed of by way of 'gifts'. In the instant case, the gold coins and white goods distributed to the dealers cannot be regarded as 'gifts' as the dealer is eligible for the gold coins and white goods only to the extent of amount lying as credit to his account and is subjected to the satisfaction of the terms and conditions of the scheme.

5.11 The applicant also states that the distribution of gold coins and white goods cannot be regarded as permanent transfer or disposal of business assets as the said restriction in respect of only those assets which are capitalised in the books of accounts and not in respect of the revenue expenditure. Further, the said distribution cannot be regarded as a supply under Section 7 of the Act as there is no consideration received by the applicant for such gold coins and white goods.

## **6. Applicant's Interpretation of Law:**

### **6.1 ITC should be allowed of the GST paid on procurement of promotional products which are given to dealers as part of promotional schemes.**

6.1.1 The applicant states that Section 16(1) of the Act deals with the availability of ITC to a registered person and Section 17(5) of the Act deals with Blocked credits. Therefore, it is pertinent to analyse these two provisions in detail to conclude that the ITC shall be available in respect of gold coins and white goods issued to dealers as part of the promotional schemes

6.1.2 As per Section 16(1) of the said Act-^

"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".~

Thus, credit is available of input tax paid on goods which are used for furtherance of business.

6.1.3 However, as per Section 17(5)(h) of the Act, "Input tax credit shall not be available in respect of the following, namely: goods lost, Stolen, destroyed, written off or disposed of by way of gift of free samples". As per the said provision, credit is not available in respect of goods which are given as gifts and free samples.

6.1.4 As mentioned above, in case of gold coins and white goods distributed to the dealers, the same are distributed based on the quantity lifted by the dealers and the amount of discount the said dealer is eligible for.

This ensures that the dealers are motivated to purchase higher quantity of cement in order to be eligible for the discount and in turn gold coins and white goods. This would result in the enhancement of the sales of the company.

6.1.5 The applicant states that as per the provisions of the Act, every registered person is 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.

6.1.6 The applicant submits that in the instant case, the gold coins and white goods are provided to the dealers in furtherance of business so as to promote and enhance the sales of the company. Thus, ITC should be allowed of the GST paid on procurement of gold coins and white goods which are given to dealers as part of the promotional schemes. Whereas Section 17(5) of the Act covers gifts for the purpose of ineligible credit which is not the case of the Applicant.

## **6.2 To constitute a 'gift' the property should be transferred voluntarily and not as a result of a contractual obligation.**

6.2.1 The applicant states that on a plain reading of the aforesaid provisions it can reasonably be concluded that ITC has to be reversed with respect to any goods disposed of by way of gift or free samples. However, it is important that the ambit and scope of "gifts" is understood properly.

The applicant states that 'Gift' has not been defined under the Act. Hence, reference will have to be made to other statutes and the jurisprudence available on the same. Gift, as per the Gift-Tax Act (18 of 1858) has been defined to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth.

6.2.2 The applicant states that in light of the above, it is concluded that to constitute a "gift" following elements are required to be satisfied: -^

a. Supply must be made without any contractual obligation. If any supply is made under a contractual obligation it cannot be termed as a 'gift'.

b. Supply must be made without any consideration in money or money's worth. Hence, supplies made out of love and affection or such other nonlegal considerations can only be termed as 'gifts'.~

6.2.3 The applicant states that it is indeed imperative, at this stage, to analyze the concept of promotion. The applicant submits that the products distributed to its dealers are for promoting their brand and are in furtherance of business and thus, ITC of the GST paid on such products should be available.-^

1. The applicant submits that the products distributed to its dealers are for promoting their brand and are in furtherance of business and thus, ITC of the GST paid on such products should be available.

2. It is pertinent to note that, if promotional items are considered as gift and the ITC on the same is disallowed, this will have a huge impact across the businesses because in order to promote sales or to create goodwill, the companies carry out various promotional schemes including distributing goods for brand promotion.

3. Therefore, based on the above submissions, the applicant states that they shall be allowed to avail the ITC on gold coins and white goods distributed to the dealers as the same are incurred as in the course or furtherance of business and they cannot be regarded as 'gifts' for the reasons mentioned above.~

## **6.3 Gold coins and white goods distributed as part of the promotion schemes cannot be regarded as permanent transfer or disposal of business asset where itc has been availed on such assets**

6.3.1 The Sl. No. 1 of the Schedule-I of the Act states that "Permanent transfer or disposal of business assets where input tax credit has been availed on such assets" shall be regarded as supply even if made without a consideration. Thus, it is imperative to understand the term "Business Assets" in order to conclude whether the gold coins and white goods issued to dealers would fall under the said entry.

6.3.2 The term "assets" is defined in various Dictionaries as below:-^

Black" Law Dictionary, Ninth Edition - "The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill. "

Online Merriam Webster Dictionary - "the items on a balance sheet showing the book value of property owned.  
"~

6.3.3 The General instructions for preparation of balance sheet and statement of profit and loss of a company are provided under Schedule III of the Companies Act, 2013. Assets therein are divided into non-current and current assets as follows:-^

"Non-current assets,-^

(1) (a) Fixed assets,-^

(i) Tangible assets

(ii) Intangible assets

(iii) Capital work-in-progress

(iv) Intangible assets under development~

(b) Non-current investments

(c) Deferred tax assets (net)

(d) Long-term loans and advances

(e) Other non-current assets~

(2) Current assets,-^

(a) Current investments

(b) Inventories

(c) Trade receivables

(d) Cash and cash equivalents

(e) Short-term loans and advances

(f) Other current assets. "~~

6.3.4 As per Note 1 to Schedule III of the Companies Act, 2013, "an asset shall be classified as current when it satisfies any of the following criteria:-^

a. it is expected to be realised in, or is intended for sale or consumption in, the company's normal operating cycle;

b. it is held primarily for the purpose of being traded;

c. it is expected to be realised within twelve months after the reporting date; or

d. it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.~

All other assets shall be classified as non-current. "

6.3.5 In view of above, it can be understood that business assets are property or equipment that a Company owns that are primarily used for running the business. There are different categories of assets including current, non-current, short-term, long-term, operating, capitalized, tangible and intangible. Business assets are itemized and valued on the asset side of the Balance sheet.

6.3.6 Also, assets mean the transactions which are recorded in the balance sheet of the organisation. Further, in an accounting sense, the said term refers to items appearing in the balance sheet of an organization. Furthermore, in general understanding, items of the balance sheet are only considered as assets. Various courts have consistently held that the meaning of a term not defined under the statute, can be derived from the meaning assigned to it in trade and industry. In this regard, reliance is placed on the following decisions:-^

(a) Dunlop India v. UoI, 7 983 (13) ELT 1566 (SC)

(b) Pharm Aromatic Chemicals, 1997 (95) E.L.T.203 (Bom.)

(c) Himani Ltd., 2011 (263) E.L.T. 335 (All.)

(d) Vicco Laboratories, 2005 (179) E.L.T. 17 (S.C.)

(e) Bella Premier Happy Hygiene Care Pvt. Ltd., 2018(17) G.S.T.L. 603 (KAR)~

6.3.7 In view of the above, an asset in common parlance and trade understanding are considered as items of the balance sheet.

6.3.8 Further, Schedule-II of the Act provides the list of activities or transactions to be treated as supply of goods or supply of services. Entry (4) of the said schedule pertains to the "transfer of business assets". Clause (a) of entry (4) provides that 'where goods forming part of the assets of a business are transferred or disposed of or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods.

6.3.9 It is evident from the aforesaid clause also that only those goods which are items of balance sheet of the company are considered as supply of goods and not all goods for the purpose of clause (a) of entry 4 of Schedule II of the Act.

6.3.10 Therefore, the term business asset mentioned under the entry 1 of Schedule-I shall be read with the clause (a) of entry 4 of schedule II, it is evident that the said entry is applicable only in case where goods which are part of the balance sheet are permanently transferred or disposed of.

6.3.11 The entry (1) of schedule I specifically uses the term "business asset" whereas the entry (2) of the Schedule states that "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 is considered to be deemed supplies. Entry 3 provides that "supply of goods" between principal and agent is considered to be deemed supplies and entry 4 of the aforesaid schedule covers import of services from a related person. Therefore, it is evident that entry 2, 3 & 4 uses the term "goods or services".

6.3.12 The term "goods" as defined under section 2(52) of the Act provides that "goods" means every kind of movable property. The said definition is reproduced below:-^

"(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"~

6.3.13 It is evident that the legislature has deliberately used the term "goods" under entry 2 & 3 of the schedule-I with the intent to tax all categories of goods. Therefore, it is clear that the legislature with the conscious mind has widened the scope of entry 2 & 3 by using the term goods in the said entry.

6.3.14 However, entry 1 of Schedule I is applicable on "permanent transfer or disposal of business assets". If the intention of the legislature was to tax all types of goods including the capital goods under the aforesaid entry 1, then the legislature would have used the "goods" which are available under entry 2 and 3. However, the legislature intentionally used the term "business asset" and therefore it is evident that the intention of the legislature was to restrict the scope of said entry to the business asset which is an item of balance sheet. Therefore, it is abundantly clear that the intention of the legislature is to apply the entry 1 of the schedule I only to the business assets which are item of the balance sheet and not to all the goods.

6.3.15 As discussed above, the term "assets" also includes inventory of the business. Therefore, even if it is assumed that the term "Business asset" used in Schedule-I also includes the inventory of the company then in such case any goods issued to any unrelated person without consideration would be deemed supply under Sl. No. 1 of the Schedule-I. In such a case, the main crux of term supply for a consideration under Section 7 of the Act would get defeated thereby rendering Section 7 redundant. This would lead to a situation where anything and everything issued whether for a consideration or not would be subjected to GST under Sl. No. 1 of the Schedule-I of the Act, which is not the intention of the GST law.

6.3.16 Based on the above submissions, gold coins and white goods distributed cannot be regarded as "Business Assets" and therefore the distribution of gold coins and white goods to dealers as part of promotional schemes cannot be regarded permanent transfer or disposal of business assets where ITC has been claimed on such assets.

**6.4 Gold coins and white goods distributed to dealers as part of the promotional scheme cannot be regarded as supply under section 7 of the act**

6.4.1 With regards to gold coins and white goods issued to dealers being treated as a supply under Section 7 of the Act, it is pertinent to analyse Section 7 of the Act. The term "supply" has been defined under section 7 of the Act as under:-^

"Section 7. Scope of supply. -

(1) For the purposes of this Act, the expression - "supply" includes-

(a) 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;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II..."~

6.4.2 It is evident from the above definition that a transaction can be said to be a supply only if the same has been made or agreed to be made for consideration. Therefore, in the absence of consideration, then supply cannot be said to have been made.

6.4.3 The term "consideration" is defined under section 2(31) of the Act. The same is reproduced below:-^

(31) "consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;~

6.4.4 Section 2(31) of the Act as above provides "consideration" an inclusive definition as any payment (in money or otherwise) or monetary value of any act or forbearance in respect of, in response to, or for the inducement of, the supply. It is submitted that "supply for consideration" as envisaged under Section 7 of the Act presupposes the existence of a reciprocal relationship between the supplier and recipient, where the supplier makes the supply in return for the consideration in money or otherwise flowing from the recipient. In other words, the nexus between the supply and consideration is sine qua non to constitute the taxable event of supply.

6.4.5 In the instant case, there is no consideration received by the applicant from the dealers for the gold coins and white goods distributed to them. Therefore, based on the above submissions, the gold coins and white goods issued to dealers as part of the discount / Incentive schemes cannot be regarded as supply under Section 7 of the Act.

#### **PERSONAL HEARING / PROCEEDINGS HELD ON 21.02.2023**

7. Sri T.R. Venkateswaran, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 21.02.2023 and reiterated the facts narrated in their application.

#### **FINDINGS & DISCUSSION**

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. From the submissions made, it is seen that the applicant is a supplier of cement and he is offering various sales promotional scheme which helps the company to achieve its sales and collection targets, one of which is called "Dealer White Goods Scheme". The applicant has stated as under:

"As part of the "monthly/ Quarterly Quantity Discount Scheme", specific slabs have been identified for different markets / locations specifying the quantity to be purchased, on a monthly basis, by the dealer in order to avail the benefit of the scheme. Tabulated below are the operational guidelines of the scheme:

Monthly Quantity Discount (QD):

Monthly Quantity Discount (QD)	Volume/ Slabs (MT/Month)	Discount (Rs./Bag)
North Karnataka & South Karnataka	60 to 100	9.00
	101 to 200	10.00
	201 to 250	11.00
	251 to 300	12.00
	• 300	13.00

Further, the additional guidelines in respect of the Monthly QD Scheme are:-^

- Applicable on all products i.e. Strongcrete, PPC & OPC clubber together
- The disbursement shall be made in the form of Gold coin on quarterly basis.~

Quarterly Quantity Discount (QD): Products OPC / PPC / Stroncrete

Quarterly Quantity Discount (QD)	Volume/ Slabs (MT/Month)	Discount (Rs./Bag)
North Karnataka & South Karnataka	60 to 300	3.50
	> 300 to 750	4.00
	> 750	5.00

Quarterly Quantity Discount (QD)	Product	Discount (Rs./Bag)
North Karnataka & South Karnataka	PPC	4.00

The additional guidelines in respect of the quarterly QD Scheme are,-^

- Dealers with >90 days outstanding shall not be eligible for this discount
- On Strongcrete volume Rs.5 per bag will be disbursed in the form of Gold
- Disbursement shall be made in the form of credit notes on Quarterly/ Half Yearly/ Yearly.~

Further, the applicant has stated that as part of the "Dealer White Goods Scheme" specific slabs have been identified for different markets/ locations specifying the quantity to be purchased during scheme period, by the dealer in order to avail the benefit of the scheme. The operational guidelines of the scheme are as follows

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Slabs	Points Slab (Scheme Period)	Incentive Item (Option 1)	Incentive Item (Option 2)	Incentive Item (Option 3)
Slab 1	675 to 900	Samsung Convection Microwave Oven	Godrej Digital Safe Locker	Gold
Slab 2	901 to 1800	Voltas / Blue Star Split AC (1.5 ton)	Samsung/ LG Washing Machine	
Slab 3	1801 to 2700	Hero HF Deluxe	Power Max Tread Mill	
Slab 4	2701 to 4500	Mac Book Air	Honda 3 KVA Genset	
Slab 5	4501 to 6750	Yamaha MT 15	Bajaj Pulsar NS 200	
Slab 6	6751 to 9000	KTM 250 Duke	Samsung 65" QLED 4K Smart TV	
Slab 7	9001 to 13500	Maruti Suzuki Alto 800	Piaggio Ape Extra (3-wheeler)	
Slab 8	13501 to 20250	Maruti Suzuki Ignis	Tata Ace Gold (Mini Truck)	
Slab 9	20251 to 27000	Hyundai Venue	Tata Intra V30 (Mini Truck)	

The additional guidelines in respect of Dealer White Goods Scheme are:

a. The scheme is points based with following earning criteria:-^

> Birla AI Strongcrete - 1 MT = 3 points

>Birla AI Premium Cement (PPC) - 1 MT = 1 Point

> Birla AI Premium Cement (OPC) - 1 MT =0.5 Point~

b. To qualify for the scheme, total outstanding amount must be cleared as per the following criteria

Outstanding	Outstanding as on	To be cleared by
1	28th Feb 2022	31st March 2022
2	31st March 2022	30th April 2022

c. Dealer defaulting in payments will be disqualified.

Further, the applicant states that as per the "Monthly / Quarterly Discount Scheme", in case any dealer from Karnataka purchases 500 MT of OPC from the company, a discount worth Rs. 13.00 per bag shall be credited to his account. Higher the quantity of cement purchased by the dealer, higher will be the discount earned by dealer resulting into higher eligibility of gold coins. At the end of the quarter, the company purchases gold coins worth the total discount credited to the account of the dealer and distributes the said gold coins to the dealer as per the agreed terms of the promotional scheme. The invoice for the said gold coins is raised in the name of the company and accordingly, the ITC of the GST paid on the gold coins is claimed by the Company. The applicant states that in case of "Monthly/ Quarterly Quantity Discount Scheme" and "Dealer White Goods Scheme", the benefit provided to the dealer is determined based on the amount credited to the account of the dealer which in turn is based on the quantity and the grade of cement purchased by such dealer. Subsequently, to pass on the benefit of such credit lying in the dealer's account, the company distributes gold coins and white goods to such dealers instead of adjusting it against the payment to be received from such dealers or issuing them credit

notes.

11. Regarding the second question, the applicant has stated that the distribution of gold coins and white goods cannot be regarded as permanent transfer of disposal of business assets as the said restriction is in respect of only those assets which are capitalized in the books of accounts and not in respect of revenue expenditure. Further, he states that the said distribution cannot be regarded as a supply under section 7 of the Act as there is no consideration received by the applicant for such gold coins and white goods.

12. In this regard, it is pertinent to note that the scope of supply is explained in Section 7(1) of the CGST Act and the same reads as under:-^

"Section 7: Scope of Supply.-

(1) For the purposes of this Act, the expression "supply" includes -

(a) 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;

(aa) .....

(b) .....

(c) the activities specified in Schedule I, made or agreed to be made without a consideration."~

It is not in doubt that the white goods or gold coins are supplied as a form of incentive.

12.1 Further, the word "consideration" is defined in clause (31) of section 2 of the CGST Act as under:-^

"(31) "consideration" in relation to the supply of goods or services or both includes -

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;~

12.2 From the promotional / incentive schemes, it is clear that the applicant is supplying goods to his dealers as incentive for achieving the targets and the same is part of a scheme which the parties are in knowledge in advance. It is also noted that it is not supply of any quantity of gold/ white goods to any dealer, but a specified quantity determined as per the terms and conditions of the scheme documents. The quantity of gold / white goods to be supplied by applicant is arrived at from the specified quantum of sales and payment of sale consideration i.e., marketing targets achieved by the dealers. Thus it is seen that achievement of marketing targets set by the applicant, is an inducement from the dealer or in other words non-monetary consideration paid by the dealers for the supply of gold / white goods by the applicant. Further since the transfer of gold / white goods from applicant to the dealers is made for a consideration, it is covered in the definition of 'supply', more so when the definition of supply is an inclusive one.

Even, if the same is not covered under the term consideration, the goods are permanently transferred to the dealers and input tax credit has been availed on such goods. The term "assets" would definitely include the "inventory" and since these goods are procured in the course of business, would be covered under the scope of "business assets". Nowhere in the Schedule I it is stated that these business assets should be capitalized. Hence as per entry 1 of the Schedule I, "permanent transfer or disposal of business assets where input tax credit has been availed on such assets" would cover the activity of distribution of white goods or gold as incentive and hence would be treated as a supply of such goods as per clause (c) of Section 7(1) of the CGST Act.

13. Coming to the first question as to whether the input tax credit of the tax paid on the gold coins and white goods are admissible or not, the following points are noted:

13.1 Input tax credit is defined in clause (63) of section 2 of the CGST Act as under:

"input tax credit means the credit of input tax"

13.2 Input tax is defined in clause (62) of section 2 of the CGST Act as under:

"input tax credit 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....."

It is no dispute that the applicant is a registered and is effecting inward supplies of gold coins and white goods to be distributed as incentive and GST is charged in the invoices issued to him. By the above definition, any amount of tax charged shall be covered under the definition of input tax credit.

13.3 Sub-sections (1) and (2) of Section 16 of the CGST Act reads as under:-^

**"Section 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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both;

Explanation: . . . .

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39....."~

From the above, subject to the charging of tax in the invoices issued by the suppliers of gold coins and white goods, the same is eligible to be claimed as input tax credit and the same has been claimed by the applicant.

14. The applicant is issuing these gold coins and white goods so procured as incentives as per the agreement reached between himself and the recipients. It is only issued subject to the fulfilment of certain conditions and stipulations. Gift is something which is given without any conditions and stipulations and hence the same cannot be covered under the scope of "gift".

Section 17(5) (h) states that input tax credit is not available on "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples". Since the goods are not given as gifts this clause is not applicable to the present transaction.

In view of the above, the input tax credit so claimed under section 16 does not become unavailable under section 17(5)(h) of the CGST Act.

15. Given that the distribution of gold coins and white goods are treated as supplies and attracts the tax liability on such distribution, the input tax credit is not restricted under any of the provisions of Section 17 more so under section 17(5)(h) of the CGST Act.

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

**RULING**

1. The applicant's obligation to issue gold coins and white goods to the dealers/ customers upon achieving the

stipulated lifting of the material/ purchase target during the scheme period would not be regarded as "goods disposed of by way of gift" and Input tax credit would not be restricted under the Section 17(5)(h) of the CGST Act, 2017.

2. The applicant's obligation to issue gold coins and white goods to the dealers/ customers upon achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No. 1 of the Schedule I to the CGST Act, 2017

3. The applicant's obligation to issue gold coins and white goods to the dealers/ customers upon achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as a supply under section 7 of the CGST Act, 2017

(Dr. M.P.Ravi Prasad)

Member

Place: Bengaluru

Date: 24-08-2023

(Kiran Reddy T)

Member