

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/User-id	27AAACG1421 A1ZH
Legal Name of Applicant	GOLDEN TOBACCO LIMITED
Registered Address/Address provided while obtaining user id	Tobacco House, S.V. Road, Vile Parle, Mumbai, Maharashtra - 400 056.
Details of application	GST-ARA, Application No. 121 Dated 04.02.2019
Concerned officer	Additional Commissioner CGST, Mumbai West.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Wholesale Business, Warehouse/Depot
B Description (in brief)	HSN - 2402 - "Cigarettes"
Issue/s on which advance ruling required	(iv) applicability of a notification issued under the provisions of the Act (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by **GOLDEN TOBACCO LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

The Applicant is seller of Cigarettes, and intends to offer extra quantity of Cigarettes (quantity discount) in addition to normal quantity against same consideration, as a taxable supply to its Distributors from their Depot.

As per new marketing strategy devised by the Applicant to promote its brands and also to increase its turnover the Applicant proposes to distribute/promote some of their brands/products in the market, thru their Distributors. The price range of these cigarettes of a pack of 10 will be in the range of Rs. 50/- to 200/- (depending upon the brand). MRP will be printed on each pack of Cigarettes. However, as marketing strategy to counter competition, instead of supplying a quantity of say 100 packs for an agreed price of say Rs.5000/- they would be supplying 110 packs of Cigarettes without recovering any additional cost from the Distributors. The Applicant would be paying GST and Compensation Cess on Rs. 5000/- at applicable rate.



Clarification sought from Hon'ble Authority for Advance Ruling:

(i) In the above transaction, whether the extra packs of Cigarettes would again be leviable to GST?

(ii) If yes, the taxable value which can be attributed to such extra packs of Cigarettes for levy of GST?

(iii) Whether extra packs of Cigarettes would be considered as exempt supplies or free samples and hence attract the provisions of Section 17 (2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017 or clause (h) of Section 17 (5) of the CGST Act, 2017?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

3. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION (S) RAISED

- a. M/s Golden Tobacco Limited, owner of famous brands of Cigarettes such a 'Gold Flake', 'Panama' etc., having their principal place of business at TOBACCO HOUSE, S.V. ROAD, VILE PARLE, MUMBAI, MAHARASHTRA - 400 056 (hereinafter referred to as the "Applicant") is holding GSTIN No. 27AAACG1421A1ZH for supply of taxable goods falling under HSN 2402 of GST Tariff from its depots located in the State of Maharashtra. These goods are manufactured by the Applicant's factory located in other States and are transferred to the Applicant on stock transfer basis on payment of appropriate GST and Compensation Cess for sale to their Distributors. The GST Rate applicable for products falling under HSN-2402 is 28% and Compensation Cess as applicable.
- b. The Applicant intent to introduce new business module for further growth of their business. As per this new sales promotion strategy the Applicant intends to supply extra packs of Cigarettes along with their regular supply quantity size to their distributors without receiving any additional consideration. Since the Applicant will not be receiving any additional consideration for the extra packs so supplied, they would be discharging GST along with Compensation Cess on the consideration attributable to such supply inclusive of normal quantity and extra quantity.

- c. The Applicant hereby submit an illustration of proposed transactions, which is as under:

Illustration:

The Applicant would be receiving an order for supply 100 Packs of Cigarettes to Distributor "A" at a price of Rs. 150 per pack against a total value of Rs. 15,000/-. As a Sales Promotion Measure and to withstand competition from rival manufacturers of Cigarettes, the Applicant would supply 110 packs of Cigarettes to Distributor "A" against the **same taxable** value of Rs. 15,000/- on which GST and Compensation Cess at applicable **rate would be charged, levied and collected.**

The Applicant will prepare the Tax invoice showing total quantity of **Cigarettes** as 110 packs and Taxable Value as Rs. 15,000/- and calculate thereon the GST and Compensation Cess. A copy of an Invoice intended to be used by the Applicant on roll out of this Sales Promotion measure is **enclosed and marked as EXHIBIT B.**

As required under Legal Metrology (Packaging Commodity) Rules 2011, MRP would be printed on each of the said 110 packs of Cigarettes. **The** packs of Cigarettes containing additional quantity would not indicate that the **same are free** supplies or are in any manner different from the packs of Cigarettes in the original quantity. The Distributor has the option to either pass on or otherwise, the benefit of additional quantity of **Cigarettes packs** received within the price of the original quantity to their stockists or retailers, **as the case may be.**

- d. **Based on the above the Applicant seeks clarification/suggestion/ validation from the Hon'ble Advance Ruling Authority as under:**

- (a) In the above transaction, whether the extra packs of Cigarettes **would** again be leviable to GST?
- (b) If yes, the taxable value which can be attributed to such **extra packs** of Cigarettes for levy of GST?
- (c) Whether extra packs of Cigarettes would be considered as exempt supplies or free samples and hence attract the provisions of Section 17 (2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017 or clause (h) of Section 17 (5) of the CGST Act, 2017?

- 3a. **Statement containing Applicant's interpretation of law in respect of the aforesaid questions**

- i. The Goods and Service Tax (GST) regime has introduced the concept of supply as a taxable event while doing away with the erstwhile taxable events of manufacture, sale, service etc.



- ii. The Section 7(1) of the CGST Act, 2017 as was in force before amendment caused to it by the CGST (Amendment) Act, 2018, states that 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;
 - (b) **import of services for a consideration whether or not in the course or furtherance of business;**
 - (c) the activities specified in Schedule 1, made or **agreed to be made** without a consideration; and
 - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- iii. Section 7(1) of the CGST Act, 2017 was amended retrospectively w.e.f. 01.07.2017 by the CGST (Amendment) Act, 2018. As per this amendment, 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;
 - (b) **import of services for a consideration whether or not in the course or furtherance of business; and**
 - (c) the activities specified in Schedule 1, made or **agreed to be made** without a consideration;

The amendment also introduced a new sub-section in Section 7 of the CGST Act, 2017 which read as under:

"(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."

- iv. The Applicant submit that as per the nature of proposed supply as indicated at Sr. No. 15 of Form ARA-01, their activity would not find **coverage within the scope of** Schedule of the CGST Act, 2017 since such supply is neither a transfer or disposal of **business assets** nor supply of goods between distinct persons, supply of goods by a principal to his agent or vice-versa. The Applicant seeks validation to this effect from the Hon'ble Authority for Advance Ruling.
- v. Since the entire quantity of Cigarettes supplied to their Distributors including additional quantity, would find reflection in the Invoice along with taxable value **thereof, the taxable value** so mentioned in the Invoice would correspond to the entire quantity of



Cigarettes supplied under the said Invoice, including the additional quantity. Hence, it cannot be a case of free supply without consideration and thus such supply of original quantity along with additional quantity would be supply as indicated in clause (a) to sub-section (1) of Section 7 of the CGST Act, 2017. The Applicant seeks validation to this effect from the Hon'ble Authority for **Advance Ruling**.

- vi. As per sub-section (1) of Section 15 of the CGST Act 2017 the value of supply of goods or services or both shall be transaction value, which is the price actually paid or payable for the said supply of goods or services or both when the supplier and theater the recipient of the supply are not related and the price the sold consideration for the supply. The sub-section (3) further states that the value of the supply shall not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply.
- vii. The taxable value shown in the Invoice for the reason that no additional consideration will be receivable from the Distributor in respect of the additional quantity of **Cigarettes**, will be the transaction value attributable to the original quantity as well as the additional quantity as per sub-section (1) of Section 15 of the CGST Act 2017. The Applicant seeks validation to this effect from the Hon'ble Authority for Advance Ruling.
- viii. In the **present case** of the Applicant, additional quantity of **Cigarettes would be** supplied to the Distributors without proportional increase in the value of goods. Hence, the value attributable to such additional quantity of **Cigarettes can be considered as** discount given to the Distributors at the time of the supply itself as per the provisions of sub-section (3) of Section 15 of the CGST Act 2017. The Applicant **seeks validation** to this effect from the Hon'ble Authority for **Advance Ruling**.
- ix. As per sub-section (2) to Section 17 of the CGST Act, 2017 where the goods or 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. The **clause (h)** of sub-section (5) of Section 17 of the CGST Act, 2017 restricts input **tax credit** in case of goods lost, stolen, destroyed, written off or disposed of by way of gift or **free samples**.
- x. In the **proposed transaction, the additional quantity of Cigarettes cannot be considered to be free supplies but against a consideration mentioned in the Invoice** on which GST and Compensation would be discharged, such supply of additional



quantity cannot be held as exempted supplies or supply of free samples. Consequently, in respect of such supplies the mischief under sub-section (2) to Section 17 of the CGST Act, 2017 or of clause (h) of sub-section (5) of Section 17 of the CGST Act, 2017 will not be attracted. The Applicant seeks validation to this effect from the Hon'ble Authority for Advance Ruling.

3b. Additional submission on 06.04.2019.

Facts of the case

- 1) In order to promote growth and boost sales of the company, we are intending to launch a promotion scheme for all our distributors. The promotion scheme that is proposed to be unveiled by the company will be applicable for all our distributors.
- 2) As per this new sales promotion strategy the **Applicant intends to supply additional packs of Cigarettes along with regular supply of cigarettes of a particular quantity, without receiving any additional consideration.** In other words a specific number of cigarettes/cigarette packs will be supplied to our customers along with a particular quantity purchased for the price of that particular quantity. The scheme which is intended to be offered by applicant will be as follows of:
 - a. The company plans to offer an additional 10 packs of cigarettes on purchase of 100 packs of cigarettes and this offer will remain steady, i.e. if a distributor places an order for 100 packs of cigarettes we shall offer an additional 10 packs of cigarettes. The distributor will pay for 100 packs of cigarettes and will receive 110 packs. Thus in this case what we will be doing is making two individual supplies, i.e. of packs of cigarettes of 100 packs and 10 packs and the said supplies same will be made for the price of 100 packs. We will deliver 110 packs of cigarettes at the price of 100 packs. In this scheme a distributor who buys 200 packs of cigarettes will get an additional 20 packs and the entire supply will be at the cost of 200 packs. Thus in this case we will be making two individual supplies and a single price will be charged for the entire supply. Hence we will effectively be supplying 110 packs for the price of 100 packs.
 - b. We are also intending to offer additional packs the number of which will increase with more orders placed for example, we are planning to offer 10 packs on every 100 packs purchased and as per this ratio we will have to supply 100 packs when an order of 1000 packs are placed by the distributors. In such cases where we receive huge order like 1000 packs we would like to supply an additional, say, 150 packs instead of 00 packs which would be supplied by us in (a) above. Hence this will be a case of staggered discounts to



distributors so that they buy more and get more and in the process increase or sales and thereby growth.

- 3) Applicant hereby submits an illustration of proposed transactions, which is as under:

Illustration:

In case of steady discount scheme

- a. The Applicant would be receiving an order for supply 100 Packs of Cigarettes from Distributor "A" at a price of Rs 150 per pack against a total value of Rs.15,000/-. As a Sales Promotion Measure and to withstand competition from rival manufacturers of Cigarettes, the Applicant would supply 110 packs of Cigarettes to Distributor "A" against the same taxable value of Rs. 15,000/- on which GST and Compensation Cess at applicable rate would be charged, levied and collected.

In case of staggered discount scheme

- b. The Applicant would be receiving an order for INR 5000 from Distributor "A" than the discount will be 10%, and an order of INR 10,000 from distributor "B" than the discount will be 20%
- 4) Both the above scheme of discount will be made available to the distributors before placing the order, in other words the distributors, even before placing the orders for supply of cigarettes from us, will be well aware of the quantum of additional packs of cigarettes which will be supplied to them.

As required under Legal Metrology (Packaging Commodity) Rules 2011, MRP would be printed on each of the said 110 packs of Cigarettes. The packs of Cigarettes containing additional quantity would not indicate that the same are free supplies or are in any manner different from the packs of Cigarettes in the original quantity.

Applicant would like to bring attention of the Honourable Authority that there has been development in our case post the filing of our Advance Ruling Application. The CBIC has issued a circular with File Number 92/11/2019-GST dated March 7, 2019. Wherein they have provided clarification on various doubts related to treatment of sales promotion schemes under GST. The government has examined various schemes and clarifications on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier in relation to following schemes :

- a) Free samples and gifts
- b) Buy one get one offer
- c) Discounts including 'Buy more, save more offers
- d) Secondary Discounts



- 7) Applicant would like to reproduce scheme number (b) Buy one get one offer. Extract of scheme which is as under -

(1) Sometimes, companies announce offers like 'Buy One, Get One free' for example, „buy one soap and get one soap free" or „Get one tooth brush free along with the purchase of tooth paste". As per sub-clause (a) of sub section (1) of section 7 of the said Act, the goods or services 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). It may appear at first glance that in case of offers like „Buy One, Get One Free", one item is being „supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies, where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

(ii) Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

(iii) It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

- 8). Applicant is also contemplating of providing a scheme in which extra quantities are supplied with normal quantities like 10 extra pack are supplied with 100 pack of cigarettes which is similar above buy one get one scheme. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying of 110 packs of cigarettes for the price of 100 packs of cigarettes, similar to the example given in Para B of the above mentioned circular. As per the circular the applicant shall also be eligible for availment of ITC goods for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

- 9) Alternatively, Applicant would also like to reproduce scheme number. (c) of the above mentioned Circular dated 07.03.2019 which is as under

(i) Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For examples Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-, such discounts are shown on the invoice itself



- (ii) *Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.*
- (iii) *It is clarified that discounts offered by the suppliers to customers (including staggered discount under „Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.*
- (iv) *It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.*

10) Applicant's also is contemplating a similar scheme as mentioned in Para (C) of the said Circular, where we will be giving staggered or increasing quantity discounts which will be shown on invoice itself. In this scenario we may give 10 packs on 100 on purchase of 100 packs; 55 packs on purchase of 500 packs, etc. In other words if quantity ordered is less than the discount offered will be less. This scheme of the applicant is similar to the scheme mentioned at Para (C) of the Circular mentioned above. Hereto we feel that ITC will be available for availment on the input goods and services and there will be no requirement of reversal on ITC for extra quantity offered.

- 11) Further we also reproduce Section-15. of CGST Act which deals with Value of supply
- 1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
 - 2) *The value of supply shall include*
 - (a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax*



Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy:

3) The value of the supply shall not include any discount which is given

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices, and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

- 12) According to section 15(3)(a) of CGST Act if discount is displayed on face of invoice it has to be excluded from value of goods. The applicant is providing discount on sale of extra quantity at the time of sale of cigarettes packs. Therefore discount is allowed to be deducted from value of invoice. Additionally it would appear that there is no requirement for reversal of ITC in case of discounts which are recorded on the invoices issued at the time of supply of the goods.

03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-



However, in Para 3(b) the applicant has come with the new scheme, which was not there in their original application.

In the instant case the applicant supplier has made reliance on the Section 15(3)(a) of the CGST Act, 2017 in isolation whereby the discount has not to be the part of value of the consignment under consideration; however in this regard attention is drawn to the Section 15(3)(b) that has been essential condition for application of the Section 15(3)(a) of the CGST Act which is evident by the term "and" at the end of the Section 15(3)(a). The Section 15(3) of the CGST Act is being reproduced for ready reference as the followings;

"15(3) The value of the supply shall not include any discount which is given

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices, and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply."

Careful reading of the above details clearly indicates that the benefit of discount in value is available only to the recipient of the supply and not to the supplier that is applicant in the instant case. Further the condition prescribed for availing the benefit of the value discount is also available only to the recipient of the supply and the supplier applicant in the instant case is no way concerned with it and it has to pay duty on the full value of the consignment in terms of the Section 15(3) of the CGST Act, 2017.

A sample transaction between a supplier "S" and a recipient: "R" for a consignment valued at Rs. 1,000/- on which 15% additional goods are being given as discount and where the rate of duty is @10%, shall be as the followings.

The invoice value at the supplier's end shall be of Rs.1,150/- [Rs. 1,000+ Rs. 150 (discount/promotional scheme at the @ 15%)] and the duty @10% on this consignment shall be paid by supplier "S" that will be amounting to be Rs.115/-.

Now to avail the benefit of the Section 15(3) of the CGST Act, 2017 the recipient of the supply "R" would take credit of the full amount of the duty paid by him that is Rs.115/- however, the recipient "R" shall have to reverse the credit of Rs.15/- attributable to the discounted amount of Rs.150/- as indicated clearly in the invoice in the instant case.

Para 14 (i): Yes, as discussed above.

Para 14 (ii): As discussed above in reply to the Para 13.

Para 14 (iii): No, it is not exempt supply (as discussed above).



04. HEARING

Preliminary Hearing in the matter was held on 06.03.2019. Sh. Parannan Namboodri, Advocate and Sh. Niketan Dhumal, Advocate appeared and requested for admission of application as per details in their application. Jurisdictional officer was absent.

The application was admitted and called for final hearing on 16.04.2019. Sh. Vishal Sheth, C.A., appeared made oral and written submissions. Jurisdictional Officer Sh. B. S. Mule, Supdt., Div.-III, Range-II, CGST & CX, Mumbai West, also appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the jurisdictional office.

We find that the applicant is a seller of cigarettes. The applicant's factory situated in various states manufactures cigarettes and transfers the same on stock transfer basis to the applicant on payment of appropriate GST and Compensation Cess. The cigarettes received by the applicant are further sold to their Distributors.

On perusing all the submissions made by the applicant we find that they are contemplating a promotion scheme for the clients/distributors wherein they intend to supply additional packs of cigarettes along with regular supply of cigarettes of a particular quantity, without receiving any additional consideration for the additional packs.

The have submitted details of the promotion scheme that is going to be introduced by them. As per their submissions, the scheme is to offer an additional 10 packs of cigarettes on purchase of every 100 packs of cigarettes and this offer will remain steady, i.e. if a distributor places an order for 100 packs of cigarettes they shall offer an additional 10 packs of cigarettes. The distributor will pay for 100 packs of cigarettes and will receive 110 packs. Thus in this case they will be making two individual supplies, i.e. of packs of cigarettes of 100 packs and 10 packs and the said supplies same will be made for the price of 100 packs. They have also submitted that in this scheme a distributor who buys 200 packs of cigarettes will get an additional 20 packs and the entire supply will be at the cost of 200 packs.

They have submitted that they are also intending to offer additional packs of cigarettes, the number of which will increase with more orders placed for example, they are planning to offer 10 packs on every 100 packs purchased and as per this ratio they will have to supply 100 packs when an order of 1000 packs are placed by the distributors. However in such cases where they receive huge orders like that of 1000 packs they would like to supply an additional, say, 150 packs instead of 100 packs. In the case of purchase of 1000 packs as mentioned aforesaid the distributor will pay for 1000 packs of cigarettes and will receive 150 packs. Thus in this

case they will be making two individual supplies, i.e. of packs of cigarettes of 1000 packs and 150 packs and the said supplies same will be made for the price of 1000 packs. Here they have stated will be a case of staggered discounts to distributors so that they buy more and get more and in the process increase or sales and thereby growth. The Applicant has also submitted illustrations in their submissions which are mentioned above.

The jurisdictional office has cited the provisions of Section 15(3) of the CGST Act and submitted that a careful reading of the said Section indicates that the benefit of discount in value is available only to the recipient of the supply and not to the supplier i.e. the applicant in the instant case. The jurisdictional office has further submitted that the condition prescribed for availing the benefit of the value discount is also available only to the recipient of the supply and not to the supplier i.e. the applicant in the instant case.

After perusing both the submissions we find that whereas the applicant is desirous of giving a quantity discount, the jurisdictional office is speaking about value discount. However we find that after the subject application was made by the applicant, a new development has taken place by way of issue of a Circular No. 92/11/2019-GST dated 07.03.2019 issued vide F. No. 20/16/04/2018-GST, which is reproduced below:-

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.

B. Buy one get one free offer:

i. Sometimes, companies announce offers like ‘Buy One, Get One free" For example,” buy one soap and get one soap free "or “Get one tooth brush free along with the purchase of tooth paste". As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services 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). It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

ii. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

iii. It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including ‘Buy more, save more’ offers:

i. Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.

ii. Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

iii. It is clarified that discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

iv. It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary Discounts

i. These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet. ii. The provisions of sub-section (1) of section 34 of the said Act provides as under: "Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed." iii. Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties. iv. It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as



such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. v. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2 (D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. vi. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

The above said Circular is clearly applicable to the facts of the subject application. From a reading of the above Circular and the facts of the matter i.e. the facts of the promotion scheme proposed by the applicant we find that their scheme of Buy 100 Get 10 free OR Buy 1000 Get 150 free” is clearly covered by Para B of the said Circular. Hence in such cases it will not be an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. In the case of Buy 100 Get 10 free it will be 2 individual supplies, each of 100 packs and 10 packs for the price of 100 packs. In such a case taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of Section 8 of the said Act. Further, ITC shall also be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

The situation mentioned at Para(C) of the above said Circular mentions situations whether value discounts are envisaged and therefore will not be applicable in the subject case where value discounts are not contemplated.

The situation mentioned at Para(D) of the above said Circular mentions situations where discounts are not known at the time of supply or where discounts are offered after the supply is over. In the subject case the discounts are known well before the supply is effected .

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 121/2018-19/B-

52

Mumbai, dt. 04/05/2019

For reasons as discussed in the body of the order, the questions are answered thus –

The Applicant is seller of Cigarettes, and intends to offer extra quantity of Cigarettes (quantity discount) in addition to normal quantity against same consideration, as a taxable supply to its Distributors from their Depot.

As per new marketing strategy devised by the Applicant to promote its brands and also to increase its turnover the Applicant proposes to distribute/promote some of their

brands/products in the market, thru their Distributors. The price range of these cigarettes of a pack of 10 will be in the range of Rs. 50/- to 200/- (depending upon the brand). MRP will be printed on each pack of Cigarettes. However, as marketing strategy to counter competition, instead of supplying a quantity of say 100 packs for an agreed price of say Rs.5000/- they would be supplying 110 packs of Cigarettes without recovering any additional cost from the Distributors. The Applicant would be paying GST and Compensation Cess on Rs. 5000/- at applicable rate.

Question (i) :- In the above transaction, whether the extra packs of Cigarettes would again be leviable to GST?

Answer :- Answered in the negative in view of the discussions made above.

Question (ii):- If yes, the taxable value which can be attributed to such extra packs of Cigarettes for levy of GST?

Answer :- Not answered in view of answer to Question No. 1 above.

Question (iii):- Whether extra packs of Cigarettes would be considered as exempt supplies or free samples and hence attract the provisions of Section 17 (2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017 or clause (h) of Section 17 (5) of the CGST Act, 2017?

Answer :- The extra packs of cigarettes will not be considered as exempt supplies or free samples and hence the provisions of 17(2) read with Rule 42 of the CGST Rules, 2017 or clause (h) of Section 17 (5) of the CGST Act, 2017 will not be applicable.



sd -
B. TIMOTHY
(MEMBER)

sd -
B. V. BORHADE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.

CERTIFIED TRUE COPY

sd -
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI