

TAX INFO

Dated 08.11.2021

Latest update on GST Law: Information regarding **Applicant not eligible for ITC on gifts to retailers for personal consumption for sales promotion** based on the **Ruling given by AAR-Tamil Nadu in re GRB Dairy Foods Pvt. Ltd dated 30.09.2021 vide Ruling No. 36/ARA/2021**

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Facts of the Case:

The applicant is engaged in the business of manufacture and supply of ghee and other products. They have their factory premises at Tamil Nadu and Karnataka having separate GST registration in both the States. The applicant launched a sales promotional offer to enhance sales of its products naming it as 'Buy n Fly' scheme and certain rewards such as Trip to Dubai, Gold Vouchers, Televisions and Air coolers were announced under the same.

The applicant submitted that the launch of the scheme and procurement of inputs or services are covered under business u/s 2(17) and also fulfil the conditions u/s 16 to take ITC of inputs and input services. He also insisted that these are not in nature of gift and operation of SI. No. 17(5)(h) do not arise. They also referred to Para C of the Circular No.92/11/2019 GST dated 07.03.2019.

As per Gift Tax Act, 1958 'gifts' are only those which are given on a voluntary basis i.e. one's own volition without any conditions attached, whereas reward is provided with an expectation of some benefit to be received.

Question on which advance ruling is sought:

Whether the GST paid on inputs/input services procured by the applicant to implement the promotional scheme under the name 'Buy n Fly' is eligible for ITC under Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017?

Submission by Revenue:

- 1) As per section 17(5)(h) free gifts or rewards given without consideration even though they are given for sales promotion do not qualify as inputs, since no GST is paid on its disposal.
- 2) As per Circular No. 92/11/2019 GST dated 07.03.2019, it is clarified that ITC 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/free samples distributed without any consideration.
- 3) The AAR of Maharashtra in the case of Bio Stadt India Ltd, has ordered that ITC is not available on the procurement of Gold Coins to be offered under Sales Promotion scheme of the applicant company to its customers.

Hence, the applicant is not eligible for availing ITC in these circumstances.

Observations of Authority:

Section 17(5)(g) restricts the ITC on the goods/services procured for personal consumption, even if those goods/services are procured in the furtherance of business. The goods and services are used by the retailers are for personal consumption and the applicant is ineligible to take ITC on these goods/services. The rewards are not in the nature of discounts to the products but are in the nature of personal consumables and qualifies to be termed as gifts.

Also, the goods are distributed on fulfilment of the conditions of the scheme, with no separate consideration, therefore, the distribution of goods and services to the retailers as per the Scheme is not a 'Supply' as defined under Section 7 of the GST Act.

Decision of the Authority:

The GST paid on inputs/input services procured by the applicant to implement the promotional scheme under the name 'Buy n Fly' is not eligible for ITC under the GST law in terms of Section 17(5)(g) and (h) of the CGST Act, 2017 and TNGST Act, 2017.

My Personal View:

"Buy & Fly" is a conditional and promotional scheme which is a business necessity and business style so it is for business purpose and ITC must be allowed because it is not free "gift" out of love and affection but conditional subject to buying of certain products and cost of such input is a cost to business and hence ITC in such a situation does not hit by Section 17(5) of the CGST Act, 2017.

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