

TAX INFO

Dated: 28.09.2020

Latest update on GST Law: Information regarding **ITC not eligible on incentives provided as gifts of goods & services** based on the **Judgement issued by Karnataka Authority for Advance Ruling.**

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

ITC not eligible on incentives provided as gifts of goods & services

Name of Applicant	In re M/s Surfa Coats (India) Pvt. Ltd.
Name of Court	AAR-Karnataka
Appeal Number	KAR ADRG 28/2019
Date of Judgement	12/09/2019

Facts of the Case:

The applicant are into the business of manufacturing decorative paints meant for interiors as well as exterior surfaces and have three manufacturing plants at Pecnya, Bengaluru to cater the market needs from time to time. The manufactured paints are marketed through their sales offices spread across in Southern and Western India.

The applicant frames incentive schemes, depending on the market conditions, to motivate dealers to lift their products. The titles of the schemes read as Painters Schemes, Dealers Incentive Schemes, Gold Schemes, Foreign and Local Trip Schemes etc.. The incentives are given subject to fulfilment of terms laid down in each such scheme.

The incentive, once computed in terms of above schemes, is given mostly in kind. The applicant purchases TVs, Refrigerators, Washing machines, Mixers, Wet Grinders, Watches, Mobiles, Gold Coins, Bed Sheets, Rice bags, T-Shirts, Rain Coats, etc., for distribution to Painters and dealers in connection with the above said incentive schemes.

They also have a Gold Scheme in which gold is given to dealers once the scheme is over as per actual sale in terms of targets fixed. The quantum of gold is specified in the incentive scheme in line with actual sales done by the dealers.

Question on which Ruling is sought

Whether the applicant is eligible to claim the GST Input tax credit on the items purchased for furtherance of business?

Contention of Applicant:

The applicant contended that they used to get the GST input tax and bills from taxable persons for procuring the above mentioned incentive items when they are purchased and these items are used in the course of furtherance of business only and not for sale.

Observations:

The goods and services so procured and disposed off/distributed as incentives/gifts are disposed without any consideration and hence do not qualify to be a supply in terms of Section 7 of the CGST Act. Further no GST is being paid on disposal of the said gift items. Section 17(5)(h) of CGST Act 2017 does not allow credit on any goods disposed by way of gift or free samples, whether or not in the course or furtherance of business. The free travel services so provided are without any consideration and hence do not qualify to be a "supply" in terms of Section 7(a)(1) of the CGST Act 2017 and Schedule I to the CGST/ KGST Act 2017.

Circular No.92/11/2019-GST dated 07.03.2019, issued by the CBIC, wherein, at Para (A)(ii), it is carified 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"

Ruling:

The applicant is not eligible to avail input tax credit on the inward supplies of goods and services which are attributable to the incentives provided in the form of gifts of goods and services to the painters and dealers and other persons under the CGST / SGST / IGST Act.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address:House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone:91-9810032846; 011 - 45131427

Email:sureshagg@gmail.com

Website:<http://www.sureshtaxation.com>