

Supply of additional quantity under a promotional scheme not leviable to GST: Maharashtra AAR

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Summary

The Maharashtra Authority for Advance Ruling (AAR) has, in a recent case, held that supplying additional quantity along with the regular supply of goods of a particular quantity without receiving any additional consideration as part of the brand promotion scheme will not be leviable to GST.

Further, the AAR held that such additional goods would not be considered as exempt supplies or free samples, and accordingly provisions restricting the availability of input tax credit (ITC) or reversal of ITC would not apply.

Facts of the case

- The Applicant¹ is engaged in the manufacturing of cigarettes at its factory located in different states and stock transfers the same to its various units by paying applicable GST and compensation cess.
- The Applicant intends to offer extra quantity of cigarettes to its distributors in addition to the normal quantity against the same consideration (quantity discount). The Applicant will be discharging GST² on the consideration attributable to such supply.
- The Applicant sought clarification from the Maharashtra AAR in respect of whether the additional quantity of cigarettes would again be leviable to GST and whether the same shall be considered as exempt supplies or free supplies, and hence attract the ITC restricting³ provisions or reversal provisions⁴ under the GST laws.

Applicant's contentions

- **Supply not covered within Schedule I:** The Applicant submitted that the above activity

would not be covered⁵ under the deeming provisions where certain activities are treated as supply even if made without consideration.

- **Not a case of free supply:** The applicant contended that the supply cannot be treated as exempt supply or free supply as the consideration mentioned in the invoice shall be for the entire quantity supplied including the additional quantity.
- **No additional consideration flowing from the distributor:** The Applicant further contended that the taxable value shown in the invoice will be the transaction value for the entire supply as no additional consideration shall be received from the distributors for additional quantity⁶. Thus, it argued that the supply of original quantity along with additional quantity would be treated as a taxable supply⁷.
- **No restriction on ITC in view of the recent circular:** It was argued that the ITC restricting⁸ provisions or reversal provisions⁹ under the GST laws should not be attracted in the present case. The Applicant placed reliance on a recent circular¹⁰ issued by the

1 M/s Golden Tobacco Limited

2 along with the compensation cess

3 Section 17(5)(h) of the CGST Act, 2017

4 Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017

5 Schedule I of the CGST Act, 2017

6 Section 15(1) of the CGST Act, 2017

7 As per section 7(1)(a) of the CGST Act, 2017

8 Section 17(5)(h) of the CGST Act, 2017

9 Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017

10 Circular No. 92/11/2019-GST dated 7 March 2019

Central Board of Indirect Taxes and Customs (CBIC), and contended that it would be eligible to avail ITC on inputs, input services and capital goods used in relation to supply of goods or services, or both as part of such promotional scheme.

Maharashtra AAR's observations and ruling

- **Applicability of the circular:** The Maharashtra AAR noted that the said circular is clearly applicable to the case of the Applicant. The AAR further observed that the same is a case of two or more individual supplies where a single price is being charged for the entire supply. Thus, it held that the present case should be treated as supply of two goods for the price of one.
- **Availability of ITC:** The AAR held that the extra packs of cigarettes would not be considered as exempt supplies or free samples, and hence the ITC restricting or reversal provisions will not be applicable. Accordingly, the AAR held that the ITC shall be available to the supplier for the inputs, input services, and capital goods used in relation to supply of goods/ services as part of such offers.

- **Taxability to be determined accordingly:**
The AAR thus concluded by holding that the taxability of such supply shall be dependent upon as to whether the supply is a composite supply or a mixed supply, and the rate of tax shall be determined accordingly¹¹.

Our comments

Promotional scheme in the form of quantity discount is a prevalent industry practice, especially in the FMCG and pharmaceutical sectors. The ruling would be a welcome relief for companies offering similar promotional discounts to their distributors. The ruling is in line with the recent clarification provided by the CBIC in respect of the tax treatment/ ITC eligibility for such promotional schemes.

It should however be kept in mind that while the AAR's decision is applicable only to the Applicant, the same may be used as a yardstick for other taxpayers engaged in similar business practices.

¹¹Section 8 of the CGST Act, 2017

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