

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G.VENKATESH, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34

2. Tmt. K.LATHA, M.sc.,(Agri) Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No.36 /ARA/2021 Dated: 30 .09.2021

GSTIN Number, if any / User id		33AACCG0136G1Z8
Legal Name of Applicant		GRB DAIRY FOODS PVT.LTD
Trade Name of the Applicant		GRB DAIRY FOODS PVT.LTD
Registered Address / Address provided while obtaining user id		10 Sidco Shed, Sipcot Industrial Complex, Hosur, Krishnagiri District, Tamil Nadu- 635126
Details of Application		Form GST ARA - 001 Application Sl.No.21/2020 dated 21.10.2020
Concerned Officer		Centre: Salem Commissionerate State: Hosur North-I Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Factory/Manufacturing
B	Description (in brief)	The applicant is engaged in the business of manufacture and supply of ghee and other products.
Issue/s on which advance ruling required		Admissibility of input tax credit of tax paid or deemed to have been paid

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

GRB DAIRY FOODS PVT LTD, 10 Sidco Shed, Sipcot Industrial Complex, Hosur, Krishnagiri District, Tamil Nadu- 635126 (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AACCG0136G1Z8. They have sought Advance Ruling on the following question:

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 Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017?

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

<p>(Question(s) on which advance ruling is required</p>	<p>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 Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017?</p>
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2.1 The Applicant has stated that they are 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 product groups of the applicant are classified into ghee, masalas, instant mixes and sweets. The products supplied by them are taxable under the Act and none of the products are either "Exempted" or "Nil rated". They sell their products through various retail stores across the country and obtain substantial revenue from Export Sales too. With the objective of expanding the market share, the applicant launched a sales promotional offer to enhance sales of its products. The sales promotional offer was named as 'Buy n Fly' scheme. The scheme was valid from 8th April 2019 to 8th July 2019. This scheme is applicable for sales of Instant Mix, Masalas, ready to eat sweets and snacks. In other words, based on the quantity and value purchases made by retailers from sub-stockists, the rewards fixed under the scheme would be awarded by the company to retailers. The supply chain of the applicant is as follows:

Manufacturer (GRB) → Super stockist → Sub-stockist (Wholesaler) → Retailer.

2.2 The applicant has stated that as per the scheme the retailers have to purchase the eligible products from the distributor, sub-stockiest and they shall be eligible for the rewards/rewards under the scheme once the targets specified therein are achieved. This is a scheme aimed at promoting second leg sales in supply chain i.e. from super-stockist to retailer which in turn would increase the over-all sales of the company and also the market share. This scheme was made known to retailers/supply chain in advance to ensure that the benefits of promotional activities accrues to the company. It is not a mandatory scheme for all the retail outlets rather it is left to the direction of retailers to participate in the scheme. As per the scheme, retail-outlets shall make efforts to maximize the sales of applicant's products which in turn leads to increase in purchase of products by them from sub-stockist. The retail outlets have an obligation to increase the sales of the products covered by the scheme as much as possible and once the purchase of products by retail outlets exceeds the specified limit under the scheme they automatically become eligible to the rewards/rewards. Broadly the obligations of the retail outlets under the 'Buy n Fly' scheme are as follows:

1. To promote the sales of applicant's products which in turn leads to more purchase of products by retail outlets from sub-stockist.

2. The retail outlet is required to maintain proper accounts/documents which indicates the purchases made by them and also sales effected by them under the scheme.

3. The rewards/rewards specified under the scheme do not accrue to the retailers automatically and/or they cannot claim the same as a matter of right under the scheme.

4. They cannot participate in any other sales promotion scheme(s)/marketing scheme(s) of any other third party/vendor during the tenure of the 'Buy n Fly' scheme i.e. 8th April to 8th July 2019.

The terms and conditions of the 'Buy n Fly' scheme as contained in the brochure are as follows:

- The scheme is valid from 8th April 2019 to 8th July 2019
- The total purchases have to be of minimum slab or above during the period.
- The rewards cannot be substituted with money.
- The bills cannot be tweaked or altered.
- The bills should have seal & signature of the retailer with contact number
- The claims have to be submitted on or before 20th of July 2019.
- The scheme is applicable for Masalas, Instant Mixes, Sweets, Townbus, snacks only (CTC is excluded) 50% bill value should be of masalas.
- Any disputes are subjected to Hosur (Tamil Nadu) jurisdiction only.

As per the scheme the targets and/slabs are as below:

Turnover Criteria	Rs. 1,50,000	Rs. 1,00,000	Rs. 50,000	Rs. 25,000
Rewards/product	Trip to Dubai	Gold Voucher	Television	Air Cooler

Further, they have stated that they had informed their super-stockiest, sub-stockiest and retailers about the scheme prior to its launch. As per the scheme and the slabs mentioned supra, the reward articles will be handed over by the applicant to those retailers who achieve the target. Once the claims are submitted by the retailers, it will be scrutinized and eligible retailers under the scheme will be identified. The applicant has furnished the sample copies of the communication letter from the applicant to eligible retail outlets. The applicant has stated that they have procured these goods and/or services i.e. Trip to Dubai, Gold voucher,

Television and Air-cooler on payment of applicable GST charged by the vendor. The quantity, cost of procurement of these goods and services and related input taxes are as follows:

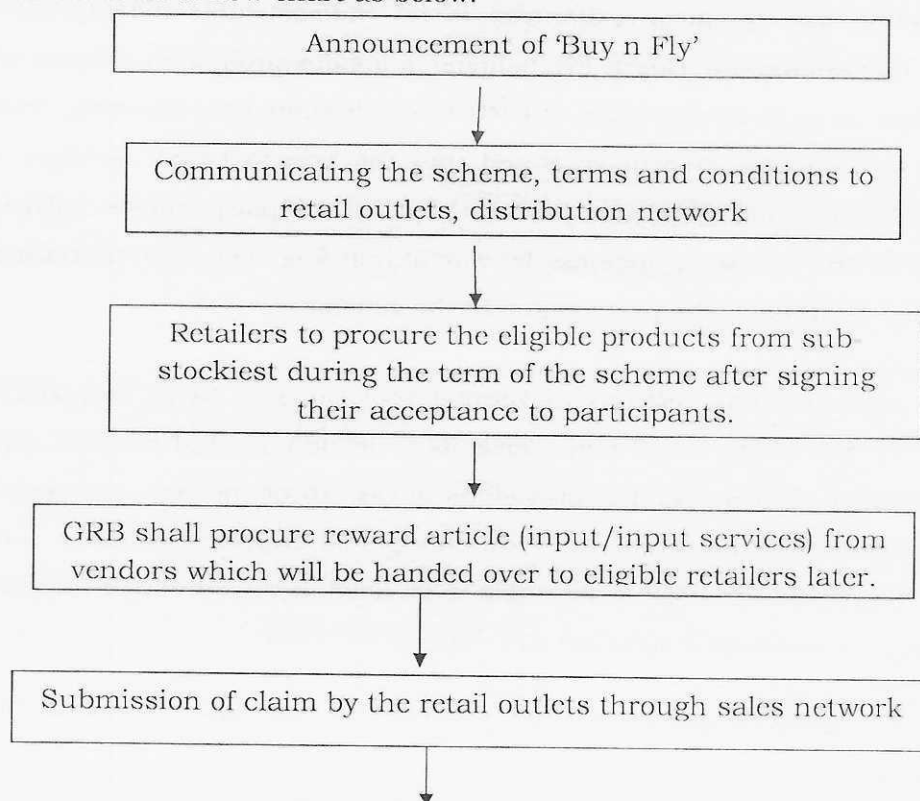
	Air Cooler	LED TV	Gold Voucher	Dubai trip
Qty	2138	466	117	229
Cost	65,01,390	29,61,868	23,40,000	1,25,18,515
Input Taxes	Rs.11,11,910 IGST	Rs.2,66,568 CGST & SGST each		Rs.11,730 IGST

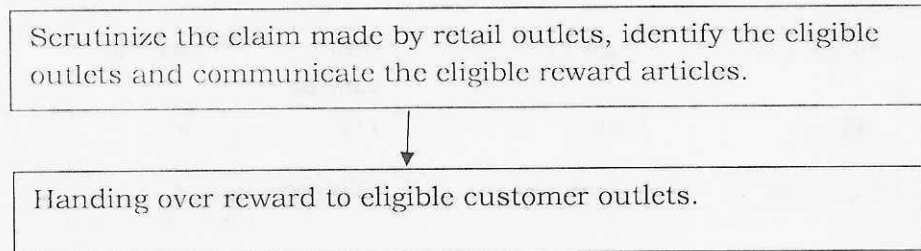
During the scheme period, the secondary market sales of the products i.e. purchases by the retailers stood as follows:

Sales and purchases by retailer:

Instant mix	Masala	Sweets	Snacks	Total
4,98,02,214	6,26,04,105	1,07,85,585	67,43,671	12,99,35,575

The applicant has furnished sample copies of invoices received from vendor in respect of these inward supplies. The applicant has also submitted the flow of scheme in the form of flow chart as below:





2.3 On interpretation of law, the applicant has stated that their products are taxable at 12%, 18% and 5% under the GST law (the Act). None of the company's products are 'exempted' or 'nil-rated.' To augment its sales, the company had launched a sales promotion scheme titled 'Buy n Fly' wherein based on the quantity and value of products purchased by the retailers, they are awarded certain rewards as per the scheme. They have submitted that they are eligible to claim input tax credit in respect of procurement of inputs and inputs services, being Trip to Dubai, Gold voucher, Television and Air-cooler. It is submitted that the applicant procures these goods and services in the course of business and it has direct nexus with the business carried on by the company. It is submitted that marketing and business expansion is an indispensable activity of every company's operations and 'Buy n Fly' scheme is a sales promotion scheme which was launched to promote the sales of GRB brand Instant mix, Masalas, ready to eat sweets and snacks. They have stated that the Trip to Dubai voucher, Gold voucher, Television and Air-cooler procured by the company will be used in its business or in the course of business by way of handing over them as rewards to the eligible retail outlets who participated in the scheme.

2.4 The applicant has referred to various provisions of CGST Act 2017 viz. Section 2(17); Sec 2(31); Sec.2 (59); Sec.2 (60), Section 16 and Section 17(5)(h). They have stated that as per the provisions of Sec 16 of the Act, any registered person is eligible to claim input tax credit charged on supply of goods or services or both to him which are used or intended to be used in the course or furtherance of business.; the conditions specified u/s 16(2) is as under:

- The registered person should possess the tax invoice issued by the supplier.
- Registered person must have received the goods.
- The tax charged in respect of such supply has been actually paid to Government.
- Registered person has furnished the return u/s 39 of CGST Act, 2017.

The applicant has submitted that they fulfill all the above conditions and hence they are eligible to take Input Tax credit of inputs and input services, being Trip to Dubai voucher, Gold voucher, Television and Air cooler. It is submitted that once the conditions prescribed u/s 16 are satisfied, the ITC becomes vested and an 'indefeasible right'. They have placed reliance in this regard on the following case laws

- CCE & ST vs H/s Dwarikesh Sugar Industries Ltd. 2016 (12) TMI 91.S (Tri-All)
- M/s Coca Cola India Pvt. Ltd. vs CCE Pune 2009 (8) TMI 50 (Bom-HC)
- CCE, Pune vs. Dai Ichi Karkaria 1999 (11.2) ELT 353 (SC)

The applicant has stated that the definition of 'business' given u/s 2(17) of the CGST Act, 2017 is very wide. It is an inclusive definition and it includes any activity or transaction in connection with or incidental or ancillary to any trade, commerce, manufacture or profession carried out by the registered person. In other words, it includes both activities which have direct and indirect nexus to the business of the registered person. Hence, the launch of 'Buy n Fly' scheme and procurement of various inputs/input services forms part of business activities of the applicant and eligible for input tax credit u/s 16 of the CGST Act, 2017.

2.5 Further, in terms of the provisions of CGST Act, 2017 the inward supply should not get covered u/s 17(5) which deals with blocked credits under the Act. The applicant has stated that Clause (h) of the said sub-section draws attention under the present case which specifies that credit shall not be eligible in case of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Considering this context, they have submitted that rewards such as Dubai Trip voucher, Gold voucher, TV and Air-cooler handed over to eligible retail outlets shall not fall under clause (h). Clause (h) deals with goods disposed of by way of 'gift' which cannot be equated to 'rewards'. Since, the term 'Gift' has not been defined under the CGST Act, 2017 they have referred to other enactments and judicial pronouncements in order to ascertain the meaning of the term 'gift'.

The term 'Gift' under Gift Tax Act, 1958 was defined as

- '(xii) gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or

conversion of any property referred to in section 4, deemed to be a gift under that section'

- As per Black's Laws Dictionary (Fourth edition): A voluntary transfer of personal property without consideration. A voluntary conveyance of land, or transfer of goods, from one person to another, made gratuitously, and not upon any consideration of blood or money.
- As per Transfer of Property Act, 1882: "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

In this regard, the applicant has relied upon the following decisions:

- Sonia Bhat vs State of UP 1.981 (3) THJ 250 (SC)
- Narmadaben Maganlal Thakker vs Pranivandas Maganlal Thakker & Others (1997) 2 SCC 255
- Birla Corporation Ltd. vs DCIT, Kolkata 2011 (10) TMI 194-ITAT (Kol)

Based on the above they have concluded that '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. In the instant case, they have formulated the 'Buy n Fly' scheme with a view to increase its sales and according to the scheme certain slabs/targets are set which, only if achieved by the retailers, they would become eligible to the rewards/rewards under the scheme. Therefore, the object of the scheme is purely sales promotion and not to offer any gifts voluntarily to its retailer outlets/dealers without conditions or eligibility criteria. The entire scheme has been formulated to further its business and the inputs and input services are procured and only in the course or furtherance of business.

2.6 In view of the aforesaid facts the applicant has submitted that the entire expenditure related to the scheme was incurred by the company in the course or furtherance of their business. This being the primary condition for availment of Input Tax Credit has been satisfied by the company in line with sec. 16(1) of the CGST Act, 2017. The term "input" is NOT to be equated with the term 'goods'. The phrase 'in the course or furtherance of business' encompasses a wide range of functions within the business. The term "business" as defined under the GST law includes any activity or transaction which may be connected, or incidental or

ancillary to the trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity. There is neither a requirement of continuity nor frequency of such activities or transactions for them to be regarded as 'business'. The law poses no restriction that the goods must be used on the shop floor, or that they must be supplied as such/ as part of other goods/ services. It would be sufficient if the goods are used in the course of business, or for furthering the business. The term 'course of business' is one that can be stretched beyond the boundaries consolidating activities that have direct nexus to outward supply. What is usually done in the ordinary routine of a business by its management is said to be done in the "course of business". "Furtherance of business" is a new term, and an entirely new concept, that has been introduced in GST. Additionally, there is no other condition attached to the term "input", especially in relation to the outward supply. Further, the law provides a flexibility for this purpose by inserting the words "or intended to be used" before "'in the course ". By this, the law secures the meaning of the term "input" even for cases where goods have been purchased but, are yet to be used in the business. Thus, the conditions of ready-to-use and put-to-use would not be relevant for considering goods as "Inputs". Therefore, it becomes amply clear that the applicant is eligible for ITC on the expenditure incurred related to said scheme.

3.1 Due to the prevailing pandemic situation and in order not to delay the proceedings the applicant was addressed through the Email address mentioned in their application to seek their willingness to participate in the hearing in digital mode. The applicant consented and the hearing was fixed to be heard on 10.12.2020. The applicant requested adjournment. The applicant was offered to be heard on 22.01.2021 virtually. The applicant again requested for adjournment and requested to be heard around second week of Feb 2021. The hearing was scheduled and held on 12.02.2021. The Authorised Representatives Tvl. Sargurunathan, Manager, Tvl. G. Vishwanathan, Chartered Accountant appeared for the hearing. They reiterated their submissions and additional submissions made vide email. They stated that:

1. The cost of the rewards are part of the costing;
2. The reward was made known initially and therefore there is a fixed contractual agreement;

3. The M.R.P of the product remained the same Pre and Post the Promotional scheme and insisted that these are not in nature of gift and operation of Sl.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. They stated that the agents are not sole agents; and

4. They have already availed the credit pertaining to the said Goods & Services.

Further, to the query whether after availing credit advance ruling is applicable, they stated that they had to avail considering the pandemic situations and requested not to reject the application on this account. Details of Credit availed with documents were asked to be furnished.

3.2 The applicant in their written submission furnished during the hearing on 12.02.2021, has stated the following:

i. As part of their product Maximum Retail Price(M.R.P.) fixing the following elements of cost are included in pricing:- Material Cost ; Labor Cost ; Manufacturing Overheads (such as Electricity & Water; Consumables for manufacturing ; Repairs and Maintenance for Plant and Machinery and allied equipments) ; Packaging Cost (both Inner and Outer Packing); Transportation Expenses ; Storage and Related Costs ; Advertisement and Sales Promotion Cost; Head Office and Regional Office Overheads ; Distributor Margin ; Profit Margin.; all these elements form the basis of fixation of the MRP. From the above it is evident that the price of the product has an element of the Advertisement and Sales Promotion Cost included and hence the consideration for the product on which GST is discharged has this element inbuilt.

ii. the objective behind running any Sales Promotion Campaign are as under:

Keeping Sales Volume at the same levels or achieve incremental volumes ; Pushing sales volume at the expense of the Competitors by encouraging dealers to move their products ; Giving Customers a taste of their Products which helps to sustain or increase Sales Volumes and Values.

iii. The applicant has submitted that the Sales Promotion Expenses incurred are pursuant to a contractual obligation. The consideration which is paid for the product includes the element of the Sales Promotion campaign costs and

therefore the contractual obligation arising from running such campaigns has the element of consideration on which GST is being discharged. They have further stated that during the promotional campaign period there was an incremental Sales of 24.28% compared to the same period in the previous year. This data can be easily verified from the GSTR 3B which has been filed relating to the operations. Hence, in the 'Buy n Fly Scheme', the objective is to make the distributors and retailers to purchase the applicant's products which has led to the increase in the sales volume of their products as indicated above on which the tax liability has been discharged and hence there is a linkage of the scheme to the final output liability.

iv. Apart from the above as stated earlier Advertisement and Sales Promotion Costs have already been included in the pricing policy. Further, the actual benefit of running the sales promotion campaign is given to the retailers/distributors who have achieved the targets and such achievements are verified by the applicant's sales force and also the MRP adopted by them is the same pre and post campaign and any adjustment in pricing is in the form of changing discount structure only. The various goods and services procured for running the campaign are not by way of a lucky draw or chance but becomes eligible only on achieving sales target. They have also relied upon the Australian High court ruling in the matter of Federal commissioner Taxation Vs McPhail wherein it has been held that to constitute a 'gift' it must appear that property transferred was transferred voluntarily and not as a result of a contractual obligation to transfer it and that no advantage of a material character was received by the transferor by way of return.

3.3 The applicant vide their letter dated 18.02.2021 submitted the following:

- Purchase invoices for procurement of promotional material- 4Nos along with Accounting Vouchers to establish that the expenses have been debited to Sales Promotion Account;
- Supply Invoices – 12 Nos

In their written submission the applicant has stated that they submitted the application for Advance Ruling on 12th May 2020 which was numbered on 19th October 2020. They had anticipated that the hearing would be completed and the ruling would be made by the Advance Ruling Authority before 20th October to enable them to take a decision on whether to avail or not avail the related Input Tax

Credit on these supplies as the cutoff date for credit availment was 20th October 2020. In the absence of any progress on the matter they availed the credit but have not utilized the same against the payment of Output Tax liability and the same is carried forward in Input Tax Credit Ledger. Further, in terms of Section 97 of the Central Goods and Services Tax Act and its corresponding provision under the State Goods and Services Tax Act the Advance Ruling authority is authorized to deal with questions relating to admissibility of input tax credit of tax paid or deemed to have been paid. The term used is admissibility of input tax credit of tax paid or deemed to have been paid and there is no specific exclusion relating to input tax credit of tax paid or availed. Hence, they have requested the authority to take cognizance of the above fact relating to the grounds on which the input tax credit was availed and their submissions.

3.4 The applicant was addressed vide letter dated 19.03.2021 to submit details of credit availed with documents as required during the hearing and the acknowledgement for online filing of their application. The applicant vide their letter dated 27.04.2021 submitted the acknowledgement dated 12.05.2020 for filing the online Advance ruling application. The State jurisdictional authority was asked to verify the utilization of ITC, credit availment details with dates and date of filing of returns for the month of September 2020 in respect of the applicant.

3.5 The State Jurisdictional authority vide their letter dated 13.08.2021 furnished his verification report, wherein it was stated that the monthly returns in form GSTR 3B filed by the applicant has been verified and submitted the following details:

3B Filing date	23.10.2020		ITC adjusted
ITC claim	IGST	Rs.56069895/-	Rs.51916653/-
	CGST	Rs.15821549/-	Rs.10486059/-
	SGST	Rs.15821549/-	Rs.10486059/-

Further, they have stated that the invoice details were requested from the applicant and were verified. The applicant had availed credit for the goods purchased for the promotional scheme. The list of purchase invoices and invoice copies of ITC availed details and GSTR3B returns has been furnished.

3.6 The applicant was extended another hearing on 22.09.2021. The Authorized representatives Tvl. S.Sridharan, V.P., Tvl. Sargurunathan, manager and Tvl. G.Vishwanathan, Chartered Accountant appeared for the hearing virtually. They

stated that in the costing of the product, the sales promotion expenses were included; a scheme was there; and on achieving the target the promotional items were given. He emphasised that in their case, there is a consideration related to the promotional items, included in their products and therefore they are eligible for ITC. They also stated that there is an incremental rise in sales to the extent of 24%. He stated that the credit was availed otherwise the same will be lapsed but the same remains in their credit ledger. The Authorised representative emphasised that these promotional items are not gifts. The promotional items are provided to the eligible persons without any tax invoice. He was asked to explain how they claim that there is consideration related to promotional items. He stated that the consideration is inbuilt in the cost of the manufactured products on which tax is paid (i.e.) the cost of their manufactured products includes the sales promotional expenses.

4.1 The State Jurisdictional authority who has the administrative jurisdiction over the applicant vide his letter ROC.617/2020 dated 05.02.2021, has submitted the following remarks:

- As per Section 17(5)h of TNGST Act 2017, input tax credit shall not be available in respect of goods lost, stolen, destroyed or written off or disposed off by way of gift or free samples. Hence, as per the act the 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. Hence, the applicant is not eligible for availing ITC of the tax paid on purchase of those products.
- As per the CBIC Circular No.92/11/2019 dated 07.03.2019, only certain sales promotional schemes are eligible for ITC and it is clarified in the circular 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. Since, the offers are given voluntarily by the applicant on fulfillment of certain conditions these are to be treated as gifts/rewards, hence the applicant is not eligible for availing ITC in these circumstances.
- The AAR of Maharashtra vide order ARA/72/18-19 B-165 dated 20.12.2018 in the case of Biostadt 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. As the case in hand is on the same ground as the above cited case, the applicant is not eligible to avail ITC on

the procurement of the products /services to be offered to their customers as sales promotional offers.

5.1 The Centre Jurisdictional authority has reported that there is no pending proceedings on the issue raised by the applicant in their Advance Ruling Application.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearing and thereafter and the submissions of the Jurisdictional authorities. The applicant is engaged in the manufacture and supply of ghee and other products such as masalas, instant mixes, ready-to-eat sweets and snacks. They had launched a sales promotional offer to enhance sale of their products. The scheme was named 'Buy N Fly' which was made applicable for their distributors/ retailers/dealers to promote sale of instant mixes, masalas, ready to eat sweets and snacks. The scheme was made available to retailers based on the quantity and cost of purchase made by these retailers from the sub-stockiest of the applicant. Under this scheme, certain rewards such as Trip to Dubai, Gold Vouchers, Televisions and Air coolers were announced and this scheme was operational from 8th April 2019 to 8th July 2019. The applicant has sought ruling on the following question:

whether the GST paid on inputs/input services such as Trip to Dubai, Gold Vouchers, Television and Air coolers procured by the applicant to implement the promotional scheme under the name 'Buy n Fly' is eligible for Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017.

The question on which ruling is sought is about the admissibility of Input tax credit, covered under Section 97(2)(d) of the GST Act. However it was found that the applicant had availed credit already on the inputs/input services on which ruling has been sought. When questioned on the fact of such availing, they submitted that the application for ruling was filed online on 12.05.2020 and physical copy of such application was filed with the registry on 19.10.2020. Credit was availed in order to avoid the same lapsing due to limitation of time for availment as the cut-off date was 20.10.2020 and that the credit so availed has been lying utilized so far in their ledger. The State Jurisdictional Officer, in his verification report dated 13.08.2021 has stated that the applicant has filed the monthly return, GSTR-3B on 23.10.2020 and the applicant has availed credit for the goods purchased for the promotional scheme. The applicant has filed the application seeking the ruling on 19.10.2020

and as on the date of filing the application, there is no pending proceedings on the issue raised by the applicant (as reported by the jurisdictional authorities). Therefore, the application is found admissible under Section 97(2)(d) of the CGST Act 2017.

7.1 From the submissions, it is seen that, the applicant is engaged in the business of manufacture and supply of ghee and other products. They have floated a sales promotional offer names as 'Buy n Fly Scheme' valid for the period from 8th April 2019 to 8th July 2019. As per the scheme, based on the quantity and value purchases made by retailers from sub-stockiest, the retailers become eligible for the reward; the scheme is applicable for sales of Instant Mix, Masalas, ready-to-eat sweets and snacks only; the claims have to be submitted on or before 20th of July 2019; the article cannot be substituted with money. The applicant has furnished the copies of Invoices based on which 'Input Credit on Sales Promotion Expenses' availed in September 2020. On perusal of these Invoices, it is seen that the invoices pertain to Passport Holders, Jerkins, Laptop bags, Gold-Kasu Pendant (OR) Lakshmi coin, 250ML Round Box, VIP trolley Bags, SKY Bags, Multi-Media Speakers, Copper Bottle, Air coolers, LED TV, Refrigerator, Washing Machine, Air conditioner, Mobile Phones, portable Bluetooth speaker, Mobile battery charger, Boxes embossed with their Logo, Tour to Dubai for 3, pressure cooker, T-shirts customized, Back pack bags, cello hot express, Iron and Steel Items (large and small structure Hangers with GRB branding, Scratch card coupons, Kraft Bags, Reverse Umbrella. Thus it is seen that the applicant has availed credit of tax paid on the goods used for sales promotions as 'gifts' and the 'goods/services', extended as rewards against target set in their scheme 'Buy n Fly' for the retailers. The question raised before us is their eligibility to credit on those goods/services, procured and handed over to the retailers who participated in the scheme and achieved the targets during the period of scheme and we restrict our ruling to the eligibility to credit of taxes paid on the goods/ services procured and disbursed as a part of the scheme, viz., Air Cooler, LED TV, Dubai Trip and do not consider the other promotional items such as 'T-Shirts(customized), 'Iron and Steel (branded with GRB)',VIP Trolley bags, SKY Bags, Umbrella, Back Packs, Jerkins, Mobile Phones, etc.

7.2 Applicant has submitted that the 'Buy n Fly' scheme was launched for their retailers as a sales promotion of their products and that the rewards of the scheme,

viz., Trip to Dubai, Gold voucher, Television and Air coolers handed out to the successful retailers are to be treated as inputs/input services used in furtherance of business; that the scheme was a contractual obligation as the details of the scheme was circulated before launch; the price paid by the dealers/distributors for procurement of their products included the component of sales promotion expenses and therefore is the consideration for the rewards of the scheme procured by them on which ITC has been claimed; that the promotional materials are not gifts and are not covered under S.17(5)(h) of the GST Act; that there is no difference in MRP of their product pre scheme and there was an incremental supplies of almost 24% during the period of the scheme; that therefore the ITC is available to them on such inputs/input services.

7.3 The eligibility to credit are governed by the provisions of Section 16 and Section 17 of the GST Act. The relevant provisions are examined as under:

16. (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.

Section 17(5) of the Act, which blocks/restricts certain credits, states as under:

(5) Notwithstanding anything contained in sub.section (1) of section 16 and sub section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

.....

(g) Goods or services or both used for personal consumption;

(h) Goods lost/stolen, destroyed, written off or disposed of by way of gift or free samples;

7.4 From the above provisions, every registered person is eligible to credit of input tax charged on the goods/services supplied to him and which are intended to be used in the course or furtherance of his business. In the case at hand, the goods/services procured by the applicant as a reward in the promotional schemes floated by them are not being supplied by them in the course of their business. The contention is that the same are procured with the intended use in furtherance of business. 'The term 'furtherance of business' encompasses any activity which

accrues/adds to the economy of the business of the person. It is stated that as a result of the promotional scheme for the retailers, 'Buy n Fly', the supply of the targeted products has increased to around 24%. Thus, the promotional scheme, 'Buy n Fly' is a scheme launched in the furtherance of business and the goods/services procured as a reward to the scheme are those procured in furtherance of business. The applicant has furnished the Tax Invoice for such purchases and it is seen that the Invoice is raised on them only. The Prima-facie conditions under Section 16 stands fulfilled.

7.5 Section 17(5) of the GST Act, gives the situations wherein, even when such goods/services are procured for furtherance of business, the tax paid thereon are not available as Input Tax Credit. The said section starts with 'Non-obstante clause', *'Notwithstanding anything contained in sub-section (1) of section 16'*, which indicates that the provisions under Section 17(5) prevails over section 16(1) of the Act. Section 17(5)(g) above, restricts the ITC on the goods/services procured for personal consumption, even if those goods/services are procured in the furtherance of business. 'Personal Consumption' is not defined in the GST Law. The legal meaning of 'Personal' is 'pertaining to the person' and 'Consumption' is defined as 'The word "Consumption" cannot be understood in the limited sense of eating but in the wider sense of using-C.Govindarajulu Naidu V. State of Madras AIR 1953 Mad 116'. The goods/services procured for disbursement in the scheme are Personal Air Coolers, LED TV, Dubai Trip for the persons and Gold Vouchers. These are distributed to the retailers for their personal consumption. The claim that the cost of these goods/services are accounted under sales promotion account, the expenses under which are considered to arrive at the cost of the product is immaterial and the argument does not hold, in as much as the credit of taxes paid on the goods/services for personal consumption is explicitly restricted. The fact of who pays for the goods and services here is irrelevant to the usage of the said goods and services. The goods and services are used by the retailers and hence are for personal consumption and the applicant is ineligible to take input tax credit on the inward supply of these goods/services.

7.6 Further, as per Section 17 (5)(h), goods disposed of by way of gift are not eligible for ITC. The term 'gift' is not defined in CGST Act, the meaning of the term 'gift' as defined in the Gift Tax Act. Is as below:

“(xii) “gift” means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money’s worth,”

The promotional rewards were extended by the applicant at their own will voluntarily without any consideration in money or money’s worth on achievement of a set target to the retailers. 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. It is to be noted that these rewards are announced based on the retailers stocking the targeted products and not on the sales made by the retailers. It is further to be noted here that the rewards are handed out to the successful persons and no tax invoice/any taxation document is raised for such handout. Also, it is stated that the goods are distributed on fulfillment 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. Section 17(5)(h) expressly restricts ITC on such gifts, even if they are procured in the course of furtherance of business. Therefore, it is clear that the tax paid on the goods/services procured for distribution as rewards extended by the applicant in the ‘Buy n Fly’ scheme is not available to them as ITC in as much as such rewards have been extended as gifts.

8. To sum up the input goods/services in the form of Trip to Dubai, Gold voucher, Televisions, Air coolers procured by the applicant for the intended use in furtherance of their business and distributed to the retailers under the ‘Buy N Fly’ scheme, are goods/services which are in the nature of gifts for personal consumption of the receiver specifically restricted under S.17(5)(g) of the GST Act. Further, the promotional rewards in goods being consumables in nature are gifts extended to the retailers for promoting their products, voluntarily distributed by the applicant without any consideration/ Tax invoice and are in the nature of gifts meant for personal consumption. Hence the input tax credit of the taxes paid on the goods/services procured to be distributed as rewards is not available to them under Section 17(5)(g) read with S.17(5)(h) of the CGST Act 2017.

9. In view of the above facts, we rule as under:

RULING

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 Input Tax Credit under the GST law in terms of Section 17(5)(g) and (h) of the CGST Act, 2017 and TNGST Act, 2017.



Tmt. K. Latha
(Member SGST)



Shri T.G.Venkatesh
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