

Case: M/s PAGE INDUSTRIES LTD [2021-TIOL-17] (KARNATAKA AAAR)

The appellant is engaged in manufacture, distribution and marketing of Knitted and Woven Garments under the brand name of "Jockey", Swimwears and Swimming Equipment's under the brand name of "SPEEDO. They had sought advance ruling for knowing eligibility of ITC on promotional events distributed to their distributors/ franchisors and give away promotional items with their brand name engraved to the customers. Aggrieved by the ruling, they filed appeal.

Appellate authority held that The Promotional Products/Materials & Marketing items used by the Appellant in promoting their brand & marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017. However, the GST paid on the same cannot be availed as input tax credit in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act, 2017

Case: M/s GUITAR HEAD PUBLISHING LLP [2021-TIOL-135] (KARNATAKA AAR)

The applicant is engaged in business of selling guitar training books in USA, UK and Canada through their website. They sends soft copy of the book to the printer located in USA, who in turn prints it and ships to the customers located in USA, UK and Canada. They sought advance ruling on the applicability of GST of supply of printed books to customers located outside India, GST applicability of printing, shipping and warehousing of books, ITC availability.

AAR held that The supply of books from the warehouse located in USA (non-taxable territory) to the customers located in USA, UK and Canada (non- taxable territory) without such books entering into India by the applicant does not amount to supply under GST & therefore ITC not eligible. Further, as regards shipping charges, printing charges applicant has to pay GST under RCM in view of section 13 of IGST Act and GST is not payable under RCM on warehousing charges as Place of supply is outside India.

Case: M/s ARISTO BULLION PVT LTD [2021-TIOL-118] (AHMEDABAD AAR)

They intend to engage in supply of Gold (including Gold Plated with Platinum) unwrought or in semi-manufactured forms or in powder form, based metal clad with silver. That it involves some manufacturing process also and in the said activities various inputs viz. Gold dore, silver dore are required; that the said inputs will be procured domestically on payment of GST at appropriate rate. The applicant has submitted that they also intend to procure Castor oil seeds directly from the Agriculturists who produce the same in their farms and after procuring the said Castor oil seeds they intend to sale on payment of applicable GST. They sought ruling to know whether GST on Castor oil seed can be discharged through the input tax credit balance legitimately earned on the inputs/raw-materials/inward supplies (meant for outward supply of Bullions) & available in the Electronic Credit Ledger.

The AAR held that Applicant cannot use the Input Tax Credit Balance available in the Electronic Credit Ledger towards the GST liability on 'Castor Oil Seed' as even the basic conditions envisaged in the provisions of Section 16(1) have not been fulfilled in the instant case i.e. the aforementioned inputs are not used or intended to be used in the course or furtherance of the business of supply of Castor oil seeds.

Case: M/s PAGE INDUSTRIES LTD [2021-TIOL-17] (KARNATAKA AAAR)

Facts of the Case:

1. The Appellant is engaged in the manufacture, distribution and marketing of Knitted and Woven Garments under the brand name "JOCKEY" and swimwear and swimming equipment under the brand name "SPEEDO. They market/sell their products through their franchisees and distributors/dealers.
2. To promote their brands and to market their products, the Appellant is availing advertisement agency services such as ads in the print media, electronic media, outdoor advertising, etc and also procuring the promotional items and marketing material such as display boards, uniforms to staff, posters, gifts and hoardings, etc to use in displaying their products at the point of purchase i.e. Exclusive Brand Operator's showrooms and retail show rooms. They are paying GST on the procurement of the advertisement services and promotional products/marketing materials.

3. They sought advance ruling on the question that Whether the Promotional Products/Materials & Marketing items used by them in promoting their brand & marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as input tax credit in terms of Section 16 of the CGST Act, 2017 or not ?
4. The AAR held as under :
 - a) The ITC on GST paid on the procurement of the "distributable" products which are distributed to the distributors, franchisees is allowed as the said distribution amount to supply to the related parties which is exigible to GST. Further the said distribution to the retailers for their use is gift to the retailers or to their customers free of cost and hence ITC of GST paid on such procurement is not allowed as per Section 17(5) of the GST Acts.
 - b) The GST paid on the procurement of "non-distributable" products qualify as capital goods and not as "inputs" and the applicant is eligible to claim input tax credit on their procurement, but in case if they are disposed by writing off or destruction or lost, then the same needs to be reversed u/s 16 of the CGST Act read with Rule 43 of the CGST Rules."
5. Aggrieved by the ruling given by the AAR, the Appellant has filed this appeal.

Questions before AAAR:

1. Whether promotional items such as gondola racks, wall shelves and panels, POP items such as mannequins and half busts, storage units, hangers, signages, posters, display stands, etc supplied free of cost & which are used in their Exclusive Brand Outlet (EBO)/franchisee showrooms and by their distributors and retailers for display and advertising of their products are eligible for input tax credit ?
2. Whether ITC is eligible on carry bags, calendars, dairies, pens, etc with their brand name embossed/engraved procured from various suppliers on payment of GST and distributed these items free of cost to the showrooms of their franchisees, distributors and retailers for the purpose of giving away to customers who buy their products?

Arguments by Appellant:

1. The Authority misconstrued facts and traversed beyond the ruling sought for by treating the Appellant and their franchisees i.e. Exclusive Brand Operators as "related persons" and thereby ruled that the promotional / marketing items transferred by the Appellant to their Exclusive Brand Operators for use in promoting their brand products amounts to "supply" in terms of Para 2 of Schedule I to the CGST Act.
2. That the Authority has presumed that the "non-distributable goods" are not transferred out of the accounts of the Appellant and same remains as asset of the Company. Also presumed that they have capitalized these goods and use these goods for promotion till usable and claim depreciation, which is factually incorrect
3. That all promotional items are accounted as sales Promotion in their books of accounts and expenses incurred towards sales promotions is necessarily input services and used for furtherance of business.
4. That to display their products at the point of purchase and to effectively make known their range of products to the ultimate customers, the Appellant is procuring display items such as stands, hangers, cupboards, ladders, etc and sending these to the Exclusive Brand Operators and Retailers to display their branded products.
5. To promote their products at retail level and to help the customers in identifying the exclusive brand operator and retailer of the Appellant's brand in the market, the Appellant is getting display boards manufactured with their brand logo and name of the exclusive brand operators and retailers.
6. That to help customers in recognizing sales girls and boys of their brands at the point of purchase i.e. showrooms of their exclusive brand operator and retailers and at the exhibition centers, they are providing the uniforms to the sales girls and boys.
7. That to attract the customers at the point of purchases, the Appellant gets posters printed in respect of newly introduced products and provides the same to the exclusive brand operators and retailers.
8. That to enhance the goodwill of their brands and maintain customer loyalty, the Appellant procures pens, dairies, table calendars, etc with affixation of their brand and distributes the same as gifts to their exclusive brand operators and retailers.

9. That since brand promotion is in furtherance of their business, the Appellant is treating the said promotional items as 'input' and availing GST paid on the same as input tax credit in terms of Section 16 of the CGST Act. The phrase "used in the course or furtherance of business" has a very vast meaning & it is not necessarily only goods or services or both procured in relation to their "output" but also includes any goods or services used in the course or furtherance of business which will qualify as "inputs" or "input service"
10. They are not simply distributing the said promotional/marketing items at free of cost to their distributors/dealers; that they are distributing the same with the obligation to promote their brands and market their products and hence the same cannot be construed as "gift" covered under Section 17(5)(h) of the CGST Act.
11. They submitted that there is a difference between disposing of goods by way of gift and using those items in promotion and marketing activity. In case of "gift" there will not be any further obligation on the part of the person who accepts the gift but in the case of promotional / marketing items sent by the Appellant, there is an obligation on the part of the franchisees or distributors/dealers to use the same in promoting the brand.
12. They further submitted that it is a contractual obligation on the part of the Appellant to equip the distributors and Exclusive Brand Outlets with training, marketing and technical assistance with the promotional products to enhance their sales and to provide necessary promotional materials; that on termination of the EBO agreement, the EBO operator shall immediately cease to use the promotional materials; that since the Appellant has at its cost distributed these promotional materials, it belongs to the Appellant and the EBOs and distributors have to return the promotional materials on termination of the agreements subject to wear and tear.

Decision of AAAR

1. With regard to the promotional items such as gondola racks, wall shelves and panels, POP items such as mannequins and half busts, storage units, hangers, signages, posters, display stands, etc, we find that there is a contractual obligation on the part of the Appellant to provide their EBO/franchisees and distributors promotional materials. The purpose of providing the EBO/franchisees and distributors with these promotional items is to enhance the sales of their products. Thus, we have no hesitation in concluding that these promotional items are indeed used in the course or furtherance of the Appellant's business.
2. It is evident that the title of the promotional items remains with the Appellant and is not transferred to the EBO or the distributor. In normal accounting standards, the cost incurred for promotional activities and procurement of promotional items is an expense for the Company. Such promotional expenses are incurred with the objective of generating more revenue for the Company. The Appellant has also urged before us that these promotional items are not capitalised in their books of accounts but are always treated as revenue expenditure and hence they cannot be considered as 'capital goods'.
3. That the promotional materials are provided to the franchisees and distributors free of charge. As per Section 7 of the CGST Act, a transaction is termed as a supply only when it is made for a consideration. However, the transactions specified in Schedule I of the CGST Act can be treated as a supply even if they are made without any consideration. One such transaction mentioned in clause (b) of Schedule I is a supply of goods or services or both made between related parties or distinct persons. In this case, we find that the franchisees and distributors are independent entities and are not related to the Appellant in any of the ways mentioned in the Explanation to Section 15 of the CGST Act.
4. These promotional items are assets of the Appellant and hence it cannot be said that there is the permanent transfer and disposal of business assets where input tax credit has been availed on such assets to fall under Schedule I
5. Therefore, the provision of promotional materials free of charge by the Appellant to the franchisees and distributors is neither covered within the scope of a taxable supply as defined in Section 7 of the CGST Act nor is it a supply covered under the ambit of Schedule I of the said Act. The activity of providing the promotional items can be termed as a 'non-taxable supply' as defined in Section 2(78) of the CGST Act
6. Section 17(2) provides that input tax credit shall be allowed only when the goods and services or both are used for business purposes or for making a taxable supply (including zero-rated supply). When the goods or services or both are used towards making an exempt supply, then input tax credit is not allowed. As per Section 2(47) of the CGST Act, the term 'exempt supply' also includes non-taxable supply. In view of the above provisions, we hold that the GST paid on the procurement of promotional items supplied to the EBOs/franchisees and distributors free of charge will not be eligible for input tax credit since the said supply is a non-taxable supply.

7. In the case of the promotional items such as carry bags, calendars, diaries, pens, etc embossed/engraved with the brand name and which are distributed to the EBOs/distributors/retailers for the purpose of giving away to the customers there is no contractual obligation on the part of the Appellant to provide these promotional items for distribution. It is voluntarily done by the Appellant with the sole intention of promoting their brand and increasing the sales of their products.
8. These distributable/give away items are supplied at will, free of cost to the EBOs/franchisees, distributors and retailers. While this supply is also a non-taxable supply and ineligible for input tax credit, there is an additional disentitlement in terms of Section 17(5)(h) which provides that goods which are disposed of by way of gift are not eligible for input tax credit.
9. These give away promotional items which are distributed at the sole discretion of the Appellant without any contractual obligation or consideration, acquires the character of gifts. The goods procured on payment of GST which are disposed of by way of gifts are barred from being eligible for input tax credit in terms of Section 17(5)(h), even if they are used in the course or furtherance of business.
10. The Promotional Products/Materials & Marketing items used by the Appellant in promoting their brand & marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017. However, the GST paid on the same cannot be availed as input tax credit in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act, 2017.

Case: M/s GUITAR HEAD PUBLISHING LLP [2021-TIOL-135] (KARNATAKA AAR)

Facts of the Case:

1. The applicant is engaged in business of selling guitar training books in USA, UK and Canada through their website. They send soft copy of the book to the printer located in USA, who in turn prints it and ships to the customers located in USA, UK and Canada.
2. Further, in another business model the applicant is having an agreement with Amazon Inc. who through their website "amazon.com" based on the choice of the customers either prints the books and sells it to the consumers on their own account or will share the link to download the e-books material in an of the electronic devices and pays royalty to the applicant as agreed between the two parties.
3. The applicant has three business models:
 - a) Sales through own website: In this transaction, customer in USA, UK and Canada places an order through Applicant's website by making payment in Foreign Currency. Applicant places the bulk order with the printer, who prints and supplies to the warehouse. The books are stored in the warehouse for quick delivery to the customer. The applicant shares the order details to the warehouse service provider, who in turn ships the books to customer. The applicant pays printing charges, warehouse charges and shipping charges to the respective service provider. The applicant collects the price of book along with shipping charges
 - b) Sales through Amazon platform: The customer places an order through Amazon web portal by making payment either of physical book or e-book. Amazon collates all the orders, prints the books and ships to customers located outside India and in case of e-books, Amazon will share the link to download the material in any of the electronic devices. Amazon will pay royalty to the applicant at agreed rates
 - c) Online Guitar training courses through the website of Guitar Head: In this transaction, the applicant is proposing to start online guitar courses through its own website. The customers can purchase the course on the website. They will be provided with a User ID and grant access to the course platform. The customer is required to login with the user ID and password to view the course. The sessions are pre-recorded and require continuous availability of internet to access the course. In case the students need any clarification regarding the content of the course, they can mail to the applicant or post a query and get it clarified from the trainer

Questions before AAR:

1. Whether the supply of books from the warehouse located in USA to the customers located in USA, UK and Canada without such books entering into India by the applicant are treated as supply under GST?
2. Whether GST is levied on the shipping charges collected by the applicant from the customers located in USA, UK and Canada for the delivery of books from the warehouse located in USA to the customer located in USA, UK and Canada?

3. Whether printing charges for printing of books charged by the Printer located in USA is taxable under RCM under GST, where only content is supplied by the applicant?
4. Whether the services received by the applicant from Foreign service provider such as warehousing of printed books located in USA (non-taxable territory) is taxable under RCM under GST?
5. Whether ITC can be availed, to the extent of inputs and input service on the transaction covered in Question 1 above?

Arguments by Appellant:

1. In order to identify these supplies as Zero-rated the same have been covered under the purview of inter-state supply. However, this cannot be interpreted to mean that all other supplies falling within the purview of Section 7 (5) (a) of the IGST Act, but not covered under section 16 of IGST Act would be considered as liable to IGST.
2. The term 'Export' covers the cases of taking goods out of India, however, principally even book being supplied to the customer located non-taxable territory which is outside India should get covered under the purview of the term 'Export'. Interpreting the term 'Export' to cover only supplies where goods are taken out of India would be restrictive and would disregard the principle of consumption-based tax. "Export of goods" should be interpreted in a broader way to cover such cross-border transaction where goods are delivered to a customer outside India even if not taken from India. Thus, applicant pleads for extending the interpretation for the meaning of 'export of goods' even to cases where goods are delivered to customer outside India even if not taken from India.
3. Para 7 of Schedule III lays that "supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering India" is covered under negative list" Thus the supply of goods from a place in non-taxable territory to another place in non-taxable territory is treated as "Neither Supply of Goods nor a Supply of Services" and it is outside the scope of definition of supply.
4. As regards shipping charges, it may be noted that supply of books is a principle supply and shipping charges being naturally bundled in the ordinary course of business is an ancillary supply. Hence leviability of GST for shipping charges depends on the taxability of principal supply being supply of books.
5. As regards GST leviability on printing charges paid outside India, it may be noted that printer requires materials for printing without which it is not possible to render the said printing services. The printing services are rendered in USA (non-taxable territory) for supply to customers in USA, UK and Canada (non-taxable territory) without bringing the same to India is outside the ambit of GST and therefore, the liability under RCM is not triggered.
6. Further, since the books are warehoused in a place which is located in USA (non-taxable territory) and they are shipped to the customers in USA, UK and Canada (non-taxable territory) without bringing the same to India, is outside the ambit of GST and therefore, the liability under RCM is not triggered.
7. Since the supply of books from one non-taxable territory to another non-taxable territory without the books entering India covers under Schedule III, no reversal of credit would be required in view of section 17(2) & 17(3) for engaging in these transactions and the fact that these supplies have been inserted in Schedule III and not included as an exemption under section 11, he is of the view that reversal of credit is not required

Decision of AAR

1. In the instant case the goods (books) are supplied by the person from the warehouse located in USA which is outside India (a non-taxable territory), to the customers in USA/UK/Canada, which is outside India (a non-taxable territory), without such books entering into India does not amount to supply under GST & therefore covered under clause 7 of Schedule III.
2. The applicant is not actually shipping the books to the customers but arranging the shipping through his agent outside India and has not furnished any copy of contractual agreement with the warehousing agent to act as their pure agent to incur expenditure towards shipping of the books. Thus the applicant is in receipt of the service of shipping the books from the warehousing agent outside India. In view of the above, it is clearly evident that the supplier providing the shipping services to the applicant is outside India, the recipient of the said service i.e. the applicant is within India and the place of supply is in India in terms of Section 13 of the IGST Act 2017. Thus the impugned service squarely qualifies to be an import of service, in terms of Section 2 (11) of the IGST Act 2017, in the hands of the applicant and hence the amount paid by the applicant towards the said shipment service is exigible to GST, under RCM.

3. Para 4 of Circular No.11/11/2017-GST dated 20.11.2017 specifies that in the case of printing of books, pamphlets, brochures, annual reports, and the like, the supply of printing of the content supplied by the recipient of supply is the principal supply and therefore such supplies would constitute supply of service, falling under heading / SAC 9989, subject to the following conditions namely a) The content is supplied by the publisher or the person who owns the usage rights to the intangible inputs. b) The physical inputs including paper used for printing belong to the printer.
4. In the instant case, the content of the books is supplied by the applicant, who owns the said content i.e. usage right to the intangible inputs. Further the physical input i.e. the paper used for printing the books belongs to the printer and hence both the conditions are fulfilled. In view of the above, it is clearly evident that the supplier providing the printing services to the applicant is outside India, the recipient of the said service i.e. the applicant is within India and the place of supply is in India in terms of Section 13 of the IGST Act 2017. Hence, the printing charges for printing of books charged by the Printer located in USA (non-taxable territory) are taxable under RCM under GST, where only content is supplied by the applicant.
5. As regards, warehousing services of printed books the place of supply of service is outside India, in terms of Section 13 of IGST Act 2017. Therefore, the impugned service is not covered under import of service and hence is not exigible to GST under RCM basis.
6. The applicant is not entitled to avail input tax credit on inputs and input services on the transaction covered in first question as the said transaction does not amount to supply under GST.

Case: M/s ARISTO BULLION PVT LTD [2021-TIOL-118] (AHMEDABAD AAR)

Facts of the Case:

1. The applicant intend to engage in supply of Gold (including Gold Plated with Platinum) unwrought or in semi manufactured forms or in powder form, based metal clad with silver, not further worked than semi-manufactured, coin etc. That it involves some manufacturing process also and in the said activities various inputs viz. Gold dore, silver dore are required; that the said inputs will be procured domestically on payment of GST at appropriate rate.
2. They also intend to procure Castor oil seeds directly from the Agriculturists who produce the same in their farms and after procuring the said Castor oil seeds they intend to supply in the Domestic market as well as intend to export the same. The applicant intends to trade in Castor oil seeds (HSN Code 1207) and it is their understanding that they are not falling under the exempted category and hence they are therefore liable to discharge GST.

Questions before AAR:

1. Whether the applicant can use Input Tax Credit Balance available in the Electronic Credit Ledger legitimately earned on the inputs/raw-materials/inward supplies (meant for outward supply of Bullions) towards the GST liability on 'Castor Oil Seed' which were procured from Agriculturists and subsequently meant for onward supply?"

Arguments by Appellant:

1. Electronic Credit Ledger is an input tax credit pool and once amount is credited, it works as deemed cash balance without linkage with inward supply and therefore the balance available in this pool account or say in Electronic Credit Ledger maintained on the GSTN Portal which can be used for payment of GST on the outward supplies in terms of Section 49(4) of the CGST Act, 2017.
2. There may be accumulation in the Input Tax Credit due to price fluctuation on downward side which will lead to reduction in price, and increase in inventories due to decrease in volume of sale(stocking).

Decision of AAR

1. That the inputs i.e. gold dores and silver dores on which the applicant intends to avail input credit are not covered under the excluded provisions section 17(5) of the Act.
2. Section 16 (1) specifically mentions that the 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. This means that, for the applicant, to be eligible to take input tax credit on any supply of goods or services, the same has to be used or should be intended

to be used in the course or furtherance of his business i.e. the nexus/connection between the inputs and the final products manufactured from these inputs is required to be proved

3. In order to be eligible to avail the aforementioned input tax credit for the payment of the GST leviable on the Castor oil seeds which they intend to supply domestically or to export it, the applicant has to first prove the nexus or connection between the aforementioned inputs and the castor oil seeds which he intends to supply, in the terms of sub-section (1) of Section 16 of the CGST Act.
4. The applicant is not eligible to utilise the input credit available in their Electronic Credit Ledger (earned on the inputs/raw-materials/inward supplies meant for outward supply of Bullions) for payment of GST liability on supply of Castor oil seeds.