

## GST RE-LEARN REFRESHER SERIES (VIRTUAL) – Part I

### GST ON RETAIL AND FMCG PRODUCTS

ORGANIZED BY  
WIRC OF ICAI



*Presented by CA RAJIV LUTHIA*

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## FMCG & RETAIL: THE JOURNEY SO FAR.....

- FMCG sector is the **4TH LARGEST** sector in the Indian Economy
- FMCG & RETAIL Sector can be classified mainly into following segment:
  - Food and Beverages (Groceries, fresh and frozen foods, packaged and semi packaged foods, aerated and non-aerated beverages)
  - Personal Hygiene and Household goods (toiletries, stationery, clothing, cleaning products, cosmetics, cleaning products, stationery, glassware etc.)
  - General Healthcare (general healthcare for human as well as animal healthcare and products)
- Growing awareness, easier access, and changing lifestyles are the key growth drivers for the consumer market.

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## GST RATE & CLASSIFICATION

- The general meaning of **CLASSIFICATION** is segregation of goods or services according to their nature and characteristics and assigning the headings and sub-headings to them
- Classification is important to determine
  - The Rate of Tax
  - The Exemption, if any
  - Whether goods/service fall under RCM
- Incorrect classification may lead to
  - Demand, Interest and Penalty
  - Payment of Tax without collection (i.e. out of own pocket)
  - Loss of reputation

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## GST RATE & CLASSIFICATION

- Notification 1/2017-CT (Rate) dated 28<sup>th</sup> June, 2017 provide rate of GST on **GOODS**.
- Notification 2/2017-CT (Rate) dated 28<sup>th</sup> June, 2017 provide **EXEMPTION** for certain goods from payment of GST.
- The classification of **GOODS** is based on CUSTOM TARRIF.
- Factors to be considered while classification of **GOODS**
  - Ingredients
  - Manufacturing Process
  - Packing
  - End use
  - Trade Parlance

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## MP HC - Global Tele Mall Vs. UOI 2018 (3) TMI 1487

### Facts:

- Appellants M/s. Global Tele Mall and M/s. GTM Tele-shopping Pvt. Ltd, were engaged in selling goods called “KASHYOG OIL” & “ KESHYOG HERBAL POWDER HAIR WASH/SHAMPOO”
- Whether these goods falls under
  - Chapter 30 - Ayurvedic medicine; **OR**
  - Chapter 33 - cosmetic or toilet preparation

### Arguments by appellant

- When the product manufactured out of ingredients specified in Ayurvedic text, the same should be classified as Ayurvedic medicine.

### Arguments by Respondent

- The products, in question, are to be considered as cosmetic and toilet preparation. Even presence of theruptic quality in the said products will not exclude them from Chapter 33

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## MP HC - Global Tele Mall Vs. UOI 2018 (3) TMI 1487

### Observation of Court:

- In the *case of B.P.L. Pharmaceuticals Ltd. V/s. CCE, Vadodara*, the issue involved was the classification of '**Selsun**' an antidandruff preparation containing 2.5% selenium sulphide. Having regard to the preparation's label, literature, expert opinion and commercial parlance understanding, **the Hon'ble SC held that the item would fall as a drug and not a cosmetic.**
- In the *case of Sharma Chemical Works* the dispute was about the classification of '**Banphool oil**'. The Apex court held that the mere fact that a product is sold across the counter and not under a doctor's prescription, does not by itself lead to the conclusion that it is not a medicament. The burden of proving that an item is understood by customers in a particular manner was on the Revenue.
- Relying on the aforesaid decisions, the Tribunal has held that the Appellate Authority rightly classified the product in question under Chapter 30 as Ayurvedic Medical Preparation.

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## MP HC -Global Tele Mall Vs. UOI 2018 (3) TMI 1487

- As per law laid down by the Apex Court in the *case of Amrutanjan Ltd V/s. CCE, 1995 (77) E.L.T. 500 (S.C.)*, the only requirement is that the product contain Ayurvedic ingredients. It is not essential that the manufacturing process should follow the formula in any text book and it was held by the SC that Amrutanjan is a Ayurvedic medicine entitled to be classified as such.
- **After considering the above decisions, it was held that hair Wash/Shampoo prepared from Ayurvedic ingredients and having therapeutic quality was classifiable as Ayurvedic Medicine.**

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## HON'BLE SC - TIMES PHARMA 2013 (8) TMI 467

### Facts of Case:

- Whether “MOISTUREX” cream falls under chapter 30 - “Medicaments” or under chapter 33 “Beauty or make-up preparations and preparations for the care of the skin ?

### Arguments of Appellant – Department

- The Id. counsel for Department-appellants argued that the ‘MOISTUREX’ is mainly used **for care of skin** and thus, they are to be classified as cosmetic or toilet preparations and are to be treated under Heading 33.04. It is further contended that even if such cosmetic products contain certain subsidiary pharmaceutical contents or even if they have certain **subsidiary curative** or prophylactic value, still, they are to be treated as cosmetics only. It is also contended that the product is sold across or under the counter and the same can be purchased without prescription of a medical practitioner and hence it is not medicament.

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## HON'BLE SC- TIMES PHARMA 2013 (8) TMI 467

### Arguments of Respondent – Times Pharma

- The very presence of pharmaceutical substances will change the identity of the product, since such constituents are **used not for care of the skin but for cure of certain diseases relating to skin**
- In the product literature, the cream is indicated for any dryness of skin associated with winter, fissure feet, cracked nipples, in the treatment of pathological dry skin conditions and also for dryness associated with leprosy and clofazimine.

### Observation of Court

- The contention that ‘MOISTUREX’ is a moisturizing cream used for softening the skin cannot be appreciated. The use of the cream is not for the care of the skin. ‘MOISTUREX’ is also not primarily intended to protect the skin from sun, tan or dryness, etc. It is intended for treating or curing the dry skin conditions of the human skin and for a few other skin complaints like fissure feet, dry scaly skin conditions, ichthyosis, etc.

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## HON'BLE SC -TIMES PHARMA 2013 (8) TMI 467

- In **Meghdoot Gramodyog Sewa Sansthan vs. CCE, Lucknow (2004) 174 E.L.T. 14 (S.C.)** it was held that the composition and the curative properties would make the difference in the classification. If the product is composed of pharmaceutical constituents which have curative properties, the product is to be classified as medicament.
- Mere fact that a product is sold across the counters and not under a Doctors prescription, does not by itself lead to the conclusion that it is not a medicament. Merely because the percentage of medicament in a product is less, does also ipso facto mean that the product is not a medicament. Generally the percentage or dosage of the medicament will be such as can be absorbed by the human body. The medicament would necessarily be covered by fillers/vehicles in order to make the product usable. It could not be denied that all the ingredients used in BANPHOOL OIL are those which are set out in the Ayurveda text books. Of course the formula may not be as per the text books but a medicament can also be under a patented or proprietary formula. The main criteria for determining classification is normally the use it is put to by the customers who use it

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## HON'BLE SC- TIMES PHARMA 2013 (8) TMI 467

- In the *case* of 'MOISTUREX', there is no dispute that the said cream is prescribed by the dermatologist for treating the dry skin conditions and that the same is also available in chemist or pharmaceutical shops in the market. The cream is not primarily intended for protection of skin. The ingredients in the cream, the pharmaceutical substances do show that it is used for prophylactic and therapeutic purposes. The Central Excise Tariff Act has unambiguously clarified as to what is a medicament for curing an ailment relating to skin. Heading 33.04 dealing with beauty or make-up preparations and preparations for the care of the skin has specifically excluded medicaments. There is also an indication under the same entry that medicinal preparations used to treat certain complaints are to be provided under the Heading 30.03 (medicaments) or 30.04 (products containing pharmaceutical substances used for medical, surgical, dental or veterinary purpose).

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## ITC RELATED TO FREE SAMPLES

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### ISSUE 1 :FREE SAMPLES:



UNILIVER has inserted the Sachet of PANTENE SHAMPOO in Newspaper as their product promotion scheme

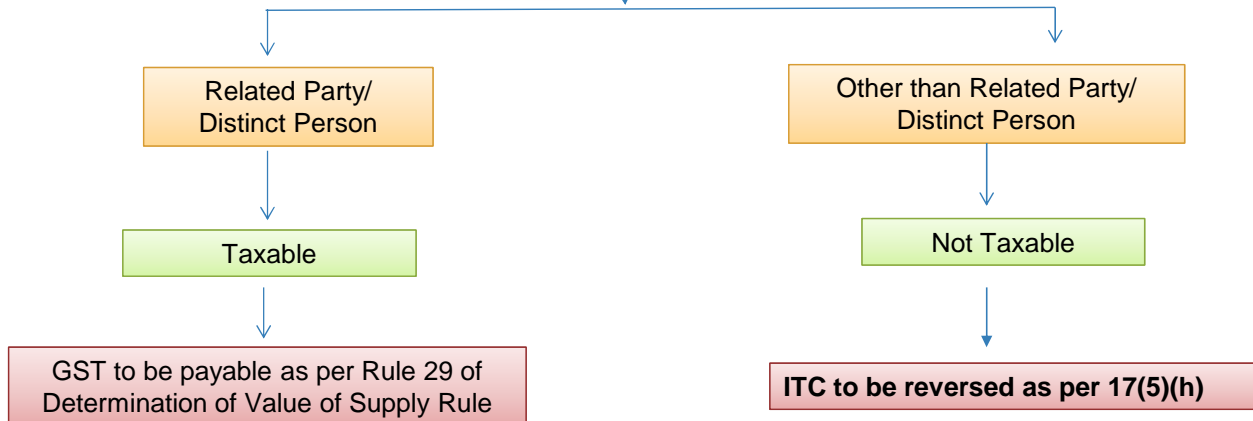


- Can UNILIVER avail the ITC of **input/input services** used in production of said promotional sachet ?

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## Distribution of Samples

### FREE SAMPLES



### CIRCULAR 92/11/2019-GST dated 7<sup>th</sup> March, 2019

- Samples supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where activity falls within the ambit of [Schedule I](#) of the [said Act](#).
- 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 or free samples distributed without any consideration.
- However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in [Schedule I](#) of the [said Act](#), the supplier would be eligible to avail of the ITC.



# ITC & TAXABILITY OF GOODS RETURNED AFTER EXPIRY DATE

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## ISSUE 2: Expired Products



Supplied Biscuits to distributor in  
July, 2020 for 5 lacs



Distributor returned expired Biscuits of  
Rs. 2 lacs in November, 2021

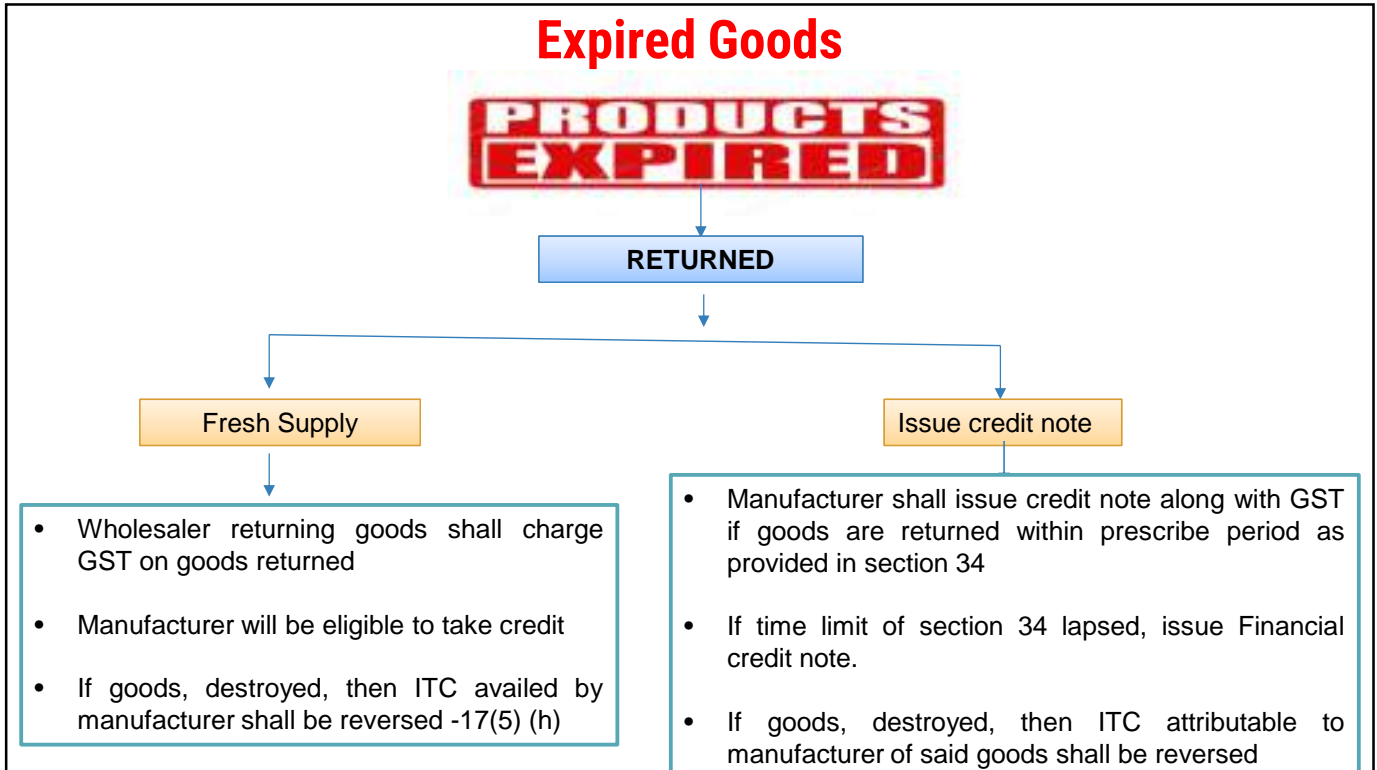


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- Whether INITIAL LOGO DISTRIBUTORS will require to charge GST on Biscuit returned to PARLE? If Yes, whether PARLE can avail ITC of GST charged by INITIAL LOGO DISTRIBUTORS?
- Can PARLE issue credit note to INITIAL LOGO DISTRIBUTOR ? Can GST be reversed by PARLE?
- What is GST implication if PARLE destroys such expired goods?

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Buy one get one free

ISSUE 3

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Mr. A avails the said offer & buy 2 shirt of Rs. 1000 each, on which he gets 1 shirt free

Lifestyle issue Invoice for Buy 2 get 1 free as follows:

Particulars	Qty	Amount
Shirt	3	Rs. 2,000
<b>Total</b>		<b>Rs. 2,000</b>



Mr. A avails the said offer & buy 2 shirt of Rs. 1,000 each, on which he gets 1 shirt free

Shopper Stop issue Invoice for Buy 2 get 1 free as follows:

Particulars	Qty	Amount
Shirt	2	Rs. 2,000
Plus 1 free under Scheme	1	NIL
<b>Total</b>		<b>Rs. 2,000</b>

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### Question:

- Will Lifestyle and Shopper shop require to reverse ITC of GST paid on shirt given as "Free"
- What if Lifestyle give Belt free on purchase of 2 shirts?

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**View:**

- Section 17(5)(h) - Goods lost, stolen, destroyed, written off or disposed of by way of gift or **free samples**
- “Buy one get one free” is a **conditional sale**. It cannot be considered as “free sample”.
- It is sale of 2 product for price of one
- Both Lifestyle and shopper stop will not require to reverse the ITC
- Even if belt is given free of cost on purchase of Shirt, ITC of belt will not be required to be reversed.

*Buy more save more*  
ISSUE 4



- In order to attract more customer, ZEEL Ltd announced a “LUCKY DRAW” offer wherein customer will get 1 coupon code against any purchase made by them. After the end of rainy season, lucky drawn will be conducted and person whose code appears in lucky draw will be given following prices
  - 1<sup>st</sup> Draw – Alto Car
  - 2<sup>nd</sup> Draw – Gold coin

ZEEL Ltd wants to know whether they can avail ITC of the said ALTO CAR & GOLD COIN Purchased

### View:

- **Section 16(1) ...**Registered person shall, subject to such conditions & restrictions as may be prescribed & in the manner specified in sec-49, be entitled to take credit of ITC 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** & said amount shall be credited to the ECL of such person.
- CAR & GOLD COIN given Free of cost to lucky draw winner, which is SALES PROMOTION ACTIVITY for furtherance of business
- Section 17(5)(h) - Goods lost, stolen, destroyed, written off or **disposed of by way of gift** or free samples
- Car and Gold coin are **not given** as “Gift”. They are not out of natural love & affection.
- **Quid pro quo** – Only THOSE CUSTOMERS who buys rainwear are eligible for lucky draw. ....**Zeel can avail ITC**
- **Entry 1 of schedule 1 of section 7.....taxable supply when without consideration???**

## Discount offer ISSUE 5

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- BALAJI WAFERS entered into agreement with distributors...whereby if they purchase Wafer packets of Rs. 10 lakhs during the year, they would be given Volume Discount of 5% for entire purchase.
- Normal credit period of 2 months given to dealer for payment. Incentive by way of cash discount @ 4% is given if dealers makes payment within 1 week from date of invoice.
- Further, BALAJI announced a scheme through a E-mail, that for month of May, 2023 if distributor purchases wafer of 2 lakh they will be given additional discount of 2% against May, 2023 purchase
- Company is of the view that that above amounts are deductible from value of supply as discount & GST is to be charged on net value. However, Auditor of company is of the view that all the above 3 amounts are in nature of commission/incentive for promotion & marketing goods, hence they are consideration for supply of services by distributors. Therefore, the dealers will have to discharge GST @18% on the said incentive amount.
- BALAJI seeks your view?

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**View:**

Section 15(3) of CGST Act Provide that *The value of the supply shall not include any discount which is given—*

*(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

*(b) after the supply has been effected, if—*

*(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*

*(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*

**View:**

- In Instant case, Volume discount was agreed between BALAJI & Distributor through an agreement entered before supply, therefore same can be allowed as deduction in value of supply.
- As regards, Discount for month of May, 2023 same would be allowed as deduction since it was agreed through E-mail before the supply for May, 2023 is effected.
- Can agreement be oral? Evidence?
- Cash discount will be allowed as deduction since same was agreed before the supply.

**View:**

- Incentive /trade discount offered is not a separate activity or service by distributor.
- This is reduction in value of supply.
- Not leviable to ST
- *My Car Pvt. Ltd vs. CCE, Kanpur - 2015 (40) S.T.R. 1018 (Delhi).*
- *CST, Mumbai-I vs. Sai Service Station Ltd. 2014 (35) S.T.R. 625 (Mumbai)*

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ITC ON GST CHARGED  
ON EXEMPTED GOODS  
ISSUE 6

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Rice Bran Ltd (RBL) is supplier of Dal and Pulses

These products are unconditionally exempt from GST

Inspite RBL charged/paid GST @ 5% while supplying to it's customer ABC who is manufacturer of sweets

ABC taken ITC of the GST charged by RBL.

RBL has also paid GST of Rs.1,00,000/- on RCM basis on certain supplies of input services which was used for supplying above exempted goods

- **Would ABC is eligible to claim ITC of the tax paid on purchase of unconditionally exempt products?**
- **Whether RBL can claim ITC of the GST Rs. 1,00,000/- paid on RCM basis on input services?**

### View:

- Section 16(1) provides for ITC to be availed of **“INPUT TAX CHARGED”**
- Section 2(62) defines **INPUT TAX**....in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes....
  - a) the integrated goods and services tax charged on import of goods;
  - b) **the tax payable under the provisions of sub-sections (3) and (4) of section 9;**
  - c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act
  - d) **the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or**
  - e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy

**View:**

- **Section 2(21) defines CENTRAL TAX... means the central goods and services tax levied under section 9;**
- **Circular No. 940/01/2011-CX dated 14th January, 2011**  
Attention is invited to Board's circular No. 937/27/2010-CX dated 26.11.10 issued from F.No.52/1/2009-CX1 (Pt.), wherein based on the opinion of the Law Ministry, it was clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, **the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.**

**It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004.**

**View:**

The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of CEA. . Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004.

- **HOWEVER...**Hon'ble courts have consistently held that Modvat for such input tax which is levied on exempted goods or excessively charged is permitted

**Hon'ble Mumbai CESTAT of Gauhati Carbon Ltd (2016) TIOL 2907.....**Revenue alleges that the appellant has availed ineligible CENVAT credit since supplier Guwahati Carbon Ltd. has paid excess duty which was not supposed to have been paid. **Held:** Identical issue was before the Tribunal in the case of Hindalco Industries Ltd. - 2014-TIOL-2139-CESTAT-DEL **wherein the Tribunal held in favour of appellant therein on merits itself, holding that the inputs supplier's assessment cannot be changed at the recipient's end - impugned order is, therefore, not sustainable and liable to be set aside**

**View:**

- **Punjab & Haryana HC in M/s V.G Steel Industry Vs. CCE Appeal No. 12 of 2011 TIOL 338 (HC) Punjab & Haryana....** When duty paid in excess of what was payable, CENVAT Credit cannot be denied unless the excess duty paid has been refunded : even if the duty has been paid in excess of the amount finally held to be payable, unless the excess duty paid has been refunded, the assessee could claim cenvat credit as the department could not get the duty twice.
- **Recipient is not required to know the law applicable to its supplier**
- **Section 2(62).....INPUT TAX.....the tax payable under the provisions of sub-sections (3) and (4) of section 9 ?????**

**View:**

Can RBL claim ITC of the GST of Rs. 1,00,000/- paid on RCM basis on exempt supplies received by it?

- This tax will not be covered within definition of INPUT TAX, since it was not payable u/s. 9(3) & (4).
- Hence once can not avail/claim ITC of the same.
- **It is advisable to claim refund of such excess payment of tax rather than going for ITC claim, which is litigation prone.**

## SALE IN LOSS ISSUE 7

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- MAX Ltd. Is in business of manufacturing & selling computer printer.
- They sold certain model of printers to distributors at Rs. 8,000/- plus GST per unit & in turn the selling price at while dealer is selling the same to customer is Rs. 10,000/- plus GST.
- Due to technology upgradation, the existing stock of printers have become unsaleable at the existing price, hence the MAX LTD. Informed all It's dealers to sell the printer at Rs. 7,000/- plus GST by giving discount of Rs. 3,000/- to customers.
- The loss of Rs, 3,000/- incurred by dealers is made good by MAX LTD. By issuing credit note of discount.
- The department issued SCN to distributors alleging that GST is payable on Rs. 10,000/- ( Rs. 7,000/- on sale of printer & Rs. 3,000/- for incentive in form of discount granted post sale). They seek your advise.

### Our View:

- This is not incentive but reduction in selling price by manufacturer to sell his product. **The agreement was not entered between the principal and distributor before the supply of outdated TV made, hence condition of section 15 (3) is not satisfied.**
- **KERALA AAR** in case of **Santhosh Distributors 2019 (11) TMI 223** has held the additional discount given by the supplier through the applicant which is reimbursed to the applicant, is to offer a special reduced price by the distributor to the customers and hence the amount represent consideration paid by the supplier of goods / principal company to the distributor for supply of goods by the distributor to the customer.

Therefore, this additional discount reimbursed by the supplier of goods / principal company to the distributor is liable to be added to the consideration payable by the customer to the distributor to arrive at the value of supply under Section 15 of the CGST / SGST Act at the hands of the distributor.

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Expenditure on sale &  
Distribution

ISSUE 8

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## Expenditure on Sale & Distribution



Sends its various employee/salesman to different states all over INDIA for promoting & marketing their products



Registered in Maharashtra

- Salesman incur various expenditure such as Hotel stay, Food expenditure, Travelling etc. while travelling to various state in India & get the same reimbursed from company.
- Whether Britannia will be eligible for ITC charged on Hotel Stay, Food, Travelling etc.?

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### Our View:

- Section 16(1) provide that 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.
- Expenditure like Hotel Stay, Food and Travelling are incurred by employee during the course or furtherance of business.
- Section 17(5)(B).....ITC of **food and beverages**, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

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### Our View:

- ITC of Foods will not be eligible in view of Section 17(5)(b)
- ITC of Travelling will be eligible in absence of any specific restriction
- ITC of Hotel accommodation will be eligible if Hotel is located in Maharashtra. However, if Hotel is located outside Maharashtra, SGST charged by hotel will not be allowed. However, good case to argue that CGST can be availed.

## Redemption POINTS ISSUE 10



- Introduced a offer in March, 2023 – On each purchase of Rs. 100, customer gets 5 reward points/voucher which can be redeem on subsequent purchase
- 1 point = Rs. 1

Mr. A Purchased goods worth Rs. 10,000/- in March, 2023 & got 500 rewards point/voucher

In April, Mr. A bought Belt of Rs. 600/- & he redeemed Rs. 500 against said purchase.

**Question:**

- Whether GST is applicable on Reward point/Voucher given to customer ?
- On what value Lifestyle will charge GST to Mr. A....Rs. 100, Rs. 600 ?

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- Section 2(118) - “voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

- In instant case, Reward points are nothing but voucher

Section 12(4) of CGST In case of supply of vouchers by a supplier, the time of supply shall be-

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

- In Instant case, while issuing reward point/voucher, supply against said voucher cannot be identifiable, therefore GST will be payable at time of redemption.

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Voucher/rewards point are nothing but currency which can be exchanged/used for purchase of goods at Lifestyle store.

Lifestyle will charge GST on Rs. 600/-.

# Thank you!

**CA. RAJIV LUTHIA**  
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