

No ITC available of GST paid on procurement of goods/services for promotional scheme— Tamil Nadu AAAR

6 April 2022



Summary

The Tamil Nadu Appellate Authority for Advance Ruling (AAAR) has affirmed the observations of Tamil Nadu AAR and held that ITC of GST paid on procurement of goods/services for the promotional scheme is not available as per Section 17(5) of the CGST Act. The AAAR elucidated that since the retailers ultimately consumed the goods/services provided under the reward scheme, such personal consumption by appellant or by its retailers would disentitle them to avail ITC. Hence, the contention regarding applicability of clause to the stage of procurement use and not on the last use would be of no avail to the appellant. The AAAR has emphasised upon the non-obstante clauses of Section 17(5) and remarked that these clauses put embargo on availability of ITC itself. The AAAR concluded that giving away of goods/services under the scheme is not a supply. Therefore, ITC of the GST paid on the goods/services procured for the scheme is not available to the appellant.

Facts of the case

- The applicant¹ is engaged in manufacturing and supply of ghee and other products. To enhance the sale of their products, the applicant had launched a promotional scheme named Buy N Fly.
- Under the scheme, retailers/distributors /dealers were asked to promote the sale of appellant's products. Upon achieving the targets mentioned, the applicant would hand over the reward articles to the eligible retailers.
- The applicant contended that input/input services procured for giving out rewards has a direct nexus with furtherance of business. Hence, they cannot be called gifts. Further, the provisions of Section 17(5) do not apply as usage test is to be applied at the stage of procurement and not at customer end.
- The applicant submitted that the object of the scheme is purely sales promotion and not to offer any gifts voluntarily without conditions/eligibility criteria.
- The applicant had approached the Tamil Nadu AAR regarding the admissibility of

ITC of GST paid on procurement of reward articles.

- Aggrieved by the order of the AAR, the applicant approached the AAAR submitting that ITC is permissible.

Tamil Nadu AAR observations and ruling²:

- **Credit already availed:** Upon perusal of the invoices, it was evident that the applicant had already availed the input credit of tax paid on goods used for sales promotion as gifts. In this respect, the applicant contended that ITC had been availed to avoid lapsing of limited period for availment of credit.
- **Promotional scheme is in the furtherance of business:** In the present case, the goods/services procured as a reward are not being supplied by them in the course of their business. However, same are procured with the intended use in furtherance of business. Due to promotional scheme, there was a 24% increase in supply of targeted products. Thus, the scheme along with the goods/services procured as a reward are

¹ GRB Dairy Foods Pvt Ltd

² TN/36/ARA/2021 order dated 30.09.2021

in furtherance of business. Therefore, the prima facie condition under the provision³ seems to be satisfied.

- **Goods used for personal consumption:** The goods distributed to eligible retailers are used by them for personal consumption. Hence, the fact that the claim and cost of such goods/services has been accounted under sales promotion account of applicant is immaterial to the usage of such goods/services.
- **Ineligible ITC:** The rewards being consumable in nature are gifts (meant for personal consumption) extended to retailers, have been voluntarily given by the applicant without any consideration. Hence, the credit of GST paid on such goods/services is not available as specifically restricted under the provisions⁴.

Tamil Nadu AAAR observations and ruling⁵:

- **Provisions put embargo on availability of ITC:** Reference to word “him” in provision, it denotes the taxpayers. However, the scheme for which goods/services procured by him are for his buyers. As per the non-obstante clause, reward scheme doesn't mean furtherance of business. Hence, the clauses put embargo on availment of ITC.
- **Costing cannot be validated:** The applicant did not submit document in relation to the promotional expenses factored. In its absence, the AAAR would not be able to venture into the correctness of the costing. Hence, the claim that the cost of products procured

for the scheme are part of MRP pricing could not be validated.

- **Applicability of Circular:** The applicant claimed its case covered under Para C of the Circular⁶. However, in this case the retailers/stockiest are extended rewards which are definitely not discount. The present case aptly falls under Para A (Free samples and gifts) of the Circular.
- **Goods under the scheme do not qualify as ‘supply’:** The giving away of goods under the scheme is not a supply. Thus, the ITC of goods/services procured for scheme is not available to the applicant.

Our comments

Similar to the present ruling, the Karnataka AAAR in case of Page

³ Section 16 of the CGST Act, 2017

⁴ Section 17(5)(g) read with Section 17(5)(h) of the CGST Act 2017.

⁵ TN/AAAR/04/2022(AR) order dated 23.02.2022

⁶ Circular No.92/11/2019 dated 7.3.2019

Industries Limited⁷ had held that ITC of GST paid on procurement of promotional items supplied free of charge is not available as the said supply is a non-taxable supply.

Even, the Maharashtra AAR in case of Biostadt India Limited⁸ had held that ITC would not be available on goods given as 'gifts' when no GST is paid on their disposal.

However, contrary to these rulings, the Bombay High Court in case of Coca Cola India Pvt Ltd.⁹ under the erstwhile regime, had allowed the input credit of service tax paid on advertising, sales promotion, etc.

As per the industry practice, many companies offer promotional gifts/incentives by way of discounts, free gifts etc. to dealers / distributors /retailers to incentivize. However, it seems that the present ruling is not in line with the intention of the law to allow ITC on sale promotion related expenses which are incurred in the course or furtherance of business.

Though the advance rulings are applicable to applicant only, however they do have persuasive value in similar cases. Hence, the present case may negatively impact the businesses due to which the businesses will be sceptical towards implementing such promotional schemes.

⁷ KAR/AAAR/05/2021 dated 16 April 2021

⁸ GST-ARA- 72/2018-19/B-165

⁹ 2009 (8) TMI 50 - BOMBAY HIGH COURT

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