

## Advance ruling restricted only to tax levied under the CGST law, not to the tax/cess levied under any other statutory law– Uttar Pradesh AAAR

26 July 2022



## Summary

The respondent had launched a scheme to supply extra packs of cigarettes along with regular supply, however, without charging consideration for the additional supply. The Uttar Pradesh (UP) Authority of Advance Ruling (AAR)<sup>1</sup> had held that such extra packs are not liable to Goods and Services Tax (GST). However, the department filed appeal against the decision of the AAR. In this respect, the UP Appellate Authority of Advance Ruling (AAAR) has held that if any commodity attracts tax/cess under any other statutory act/rules, then the scope of advance ruling will be limited to tax levied under the Central Goods and Services Tax (CGST) Act, 2017 only. Further, the AAAR opined that the circular<sup>2</sup> does not bar any commodity, rather it elaborates the scheme. Besides, the application cannot be rejected on the basis that the department has issued alerts on other issues against the applicant.

## Facts of the case

- The respondent<sup>3</sup> is engaged in the business of manufacturing, marketing and distribution of cigarettes. The respondent manufactures goods outside the state, which were later transferred on stock transfer basis<sup>4</sup>. The respondent has launched a new sale scheme to supply extra packs of cigarettes along with regular supply quantity, without charging any consideration for additional supply.
- The respondent had approached the AAR to seek clarity on tax liability on the additional quantity of cigarettes. The AAR had held that the extra packs are not liable to GST and will not be considered as exempt supplies or free samples, hence the provisions<sup>5</sup> will not be applicable.
- The aggrieved authorities filed the present appeal. It submitted that apart from ad-valorem taxation, cigarette is subjected to specific taxation of quantity-based system. Therefore, any ruling passed without considering all the aspect is bad in law. Further, the AAR does not have authority to discuss about other laws<sup>6</sup>.

### UP AAAR observations and ruling<sup>7</sup>:

- **Scope of AAR:** The AAAR opined that advance ruling can be sought on the specified questions<sup>8</sup> and there is no bar on any specific commodity/ entity. The AAR can decide the case, on the questions which are in reference to the tax levied under the GST Act. Further, if any commodity attracts tax/cess levied under any other statutory act/rules, then the advance ruling will be restricted to

<sup>1</sup> UP ADRG 84/2021 dated 18 October 2021

<sup>2</sup> Circular no. 92/11/2019-GST dated 7 March 2019

<sup>3</sup> Golden Tobie Private Limited

<sup>4</sup> after payment of 28% GST and compensation cess

<sup>5</sup> Section 17(2) read with Rule 42 or clause (h) of Section 17(5)

<sup>6</sup> Central Excise Act, 1944, IGST Act, 2017 and GST (Compensation to State) Act, 2017

<sup>7</sup> UP/AAAR/01/2022 dated 23 May 2022

<sup>8</sup> specified under sub-section (2) of the Section 97 of the Act

the tax portion levied under the CGST Act only.

- **Circular does not bar any commodity:** The AAAR observed that the circular does not bar any particular commodity, rather, it elaborates the scheme<sup>9</sup>. It may appear that one item is being supplied free of cost, without any consideration. However, it is not an individual supply of free goods, but a case of two or more individual supplies, where a single price is being charged for the entire supply. Thus, it can be considered as supply of two goods for the price of one. In view of the above, the AAAR observed that the contention of the appellant<sup>10</sup> is not tenable.
- **Application can be rejected if similar issue pending or decided:** The application for advance ruling can be rejected only if the issue raised in the application is pending or has been decided in any proceedings in the case of applicant under any of the provisions of the Act. In the instant case, the department issued several alerts against the respondent for indulging in refund claim of accumulated input tax credit (ITC) obtained through fraudulent

means. However, it has been nowhere objected by the appellant that the questions raised in the advance ruling application of the respondent is already pending or decided in any proceedings. Accordingly, the AAR has rightly admitted and decided the application filed by the respondent.

### Our comments

Earlier, the Maharashtra AAR in case of Golden Tobacco Limited<sup>11</sup> had held that the extra packs of cigarettes will not be leviable to GST and the circular is clearly applicable to the facts of subject application.

In the present ruling, the AAAR has upheld the order issued by the UP AAR and emphasised that the advance ruling is restricted to the tax portion levied under the GST law only. The AAAR has also clarified the applicability of the circular and shall set precedence in the similar matters.

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<sup>9</sup> “Buy one get one free offer”

<sup>10</sup> Deputy Commissioner, CGST & C.Ex. Division II, Agra Commissionerate

<sup>11</sup> GST-ARA-121/2018-19/B-52 dated 4 May 2019

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