

2022 (2) TMI 825 - AUTHORITY FOR ADVANCE RULING, UTTAR PRADESH

IN RE: M/S. GOLDEN TOBIE PRIVATE LIMITED

UP ADRG 84/2021

Dated: - 18-10-2021

Levy of GST - promotional scheme of extra packs of cigarettes - taxable value which can be attributed to such extra packs of cigarettes for levy of GST - extra packs of cigarettes would be exempt supplies or free samples - applicability of provisions of Section 17(2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017, or clause (h) of Section 17(5) of the UPGST Act, 2017 - HELD THAT:- The promotional scheme of additional 30 packs of cigarettes on every purchase of 100 packs of cigarettes for the payment of 100 packs of cigarettes is a taxable supply of 130 packs of cigarettes on the price of 100 packs of cigarettes. There would no tax liability on additional 30 packs of cigarettes supplied with 100 packs of cigarettes. Further, ITC shall also be available to the supplier for the inputs, input services and capital goods used in relation to Supply of goods or services or both as part of such offers.

The provisions relating to 'supply' with respect to related persons and / or distinct persons are specifically covered within schedule I of the CGST Act, 2017 i.e. Activities to be treated as supply even if made without consideration. As per the said provisions, any supply of goods or services or both when made in the course or furtherance of business between the related persons or between the distinct persons, the same would be treated as supply even when the supply is made without consideration. As such, any transaction between the related persons or between the distinct persons, irrespective of the consideration, would be treated as 'supply' and hence taxable under GST.

The cigarettes would not be supplied through sole distributor (i.e. related person) and in case of any divergence from the said disclosure (i.e. in case of supply to related person or distinct person), the ruling will be void ab-initio as per Section 104 of the CGST Act, 2017.

Judgment / Order

SHRI ABHISHEK CHAUHAN AND SHRI VIVEK ARYA, MEMBER

Represented by : Shri Priyadarshi Manish, Advocate & Authorized representative

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98 (4) OF THE UPGST ACT, 2017

1. M/s Golden Tobie Private Limited, Unit No-302, Third Floor, Padam Business Park, Plot No-12, INS1 Sector 12A, Awas Vikas Sikandra Yogna, Agra, Uttar Pradesh, 282007 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAVCS3344P2ZC.

2. As per Form GST ARA-01 submitted by the applicant-

(1) *The Applicant is engaged in the business of manufacturing, marketing and distribution of cigarettes in the domestic market i.e. in India and even abroad.*

(2) *The applicant is registered under GST for supply of taxable goods falling under HSN 2402 of GST Tariff from its depots located in the State of Uttar Pradesh.*

(3) *These goods are manufactured by the applicant's factory located in other state and are transferred to the Applicant on stock transfer basis on payment of appropriate GST and Compensation Cess for sale to their distributors. The GST rate applicable for products falling under HSN-2402 is 28% alongwith applicable compensation cess.*

(4) *The Applicant has recently entered into the domestic market and wants to introduce new business module in order to carve out a niche for itself in view of the competition in the market on account of earlier established firms/companies and in order to establish their business.*

(5) *That with a view to grow in the present prevailing scenario and in order to increase its market presence, it has introduced a new sales promotion strategy by way of which the Applicant would be supplying extra packs of cigarettes along with their regular supply quantity to their distributors without receiving any additional consideration and/or additional payment for the extra supply. That as the Applicant would not be receiving any additional consideration for the extra packs which would be so supplied, they would be discharging GST along with the applicable compensation cess on the consideration, attributable to such supplies, which includes both normal quantity as well as the extra quantity.*

(6) *That in order to explain the proposed transaction better, the Applicant has given the following illustration:*

(i) The Applicant would be receiving an order for supply of 100 packs of cigarettes to distributors "A" at a price of ₹ 100/- per pack against a total value of ₹ 10,000/-. That as a sales promotion measure and to establish its products in the market and grow in the market coupled with the strategy to withstand competition from rival manufacturers of cigarettes, the Applicant would supply 130 packs of cigarettes to distributors "A" against the same taxable value of ₹ 10,000/- on which GST and compensation cess at applicable rates would be charged, levied and collected.

(ii) That the Applicant would prepare the tax invoice showing total quantity of cigarettes as 130 packs and taxable value as ₹ 10,000/- and calculate thereon the GST and compensation cess.

(iii) That as required under the provisions of Legal Metrology (Packing Commodities) Rules, 2011, the MRP would be printed on each of the said 130 packs of cigarettes. The packs of cigarettes containing additional quantity would not indicate that the same are free supplies or are in any manner different from the packs of cigarettes in the original quantity. The distributors would have two options in this case that is either to pass on the said benefit or the benefit of additional quantity of cigarettes packs received within the price of the original quantity to their stockist or retailers as the case may be.

(iv) That in order to further clarify it is submitted that by way of the scheme a specific number of cigarettes / cigarette packs would be supplied to the Applicant's customers along with a particular quantity purchased for the price of that particular quantity. The scheme is further explained as under:

*(a) That as already stated the Applicant company would supply an additional 30 packs of cigarettes on purchase of 100 packs of cigarettes and this offer would remain the same irrespective of the quantity whose order is placed by the distributor. That in other words if the distributor places an order for 100 packs of Cigarettes he would be offered an additional 30 packs of cigarettes which is equivalent to 130 packs of cigarettes but he would be required to pay for only 100 packs of cigarettes. **That even though the Applicant would be making two individual supplies, i.e. packs of cigarettes of 100 packs and 30 packs but the said supply would be made for the price of 100 packs.** That in this scheme a distributor who buys 200 packs of cigarettes would get an additional 60 packs and the entire supply would be at the cost of 200 packs and so on and so forth. That therefore, whereas the Applicant would be making two individual supplies and a single price would be charged for the entire supply. That therefore, the Applicant would be supplied 130 packs for the price of 100 packs.*

3. The applicant has sought advance ruling on the following questions-

- (i) In the above transaction whether the extra packs of cigarettes would again be leviable to GST.*
- (ii) If yes, the taxable value which can be attributed to such extra packs of cigarettes for levy of GST*
- (iii) Whether extra packs of cigarettes would be considered as exempt supplies or free samples and hence, attracts the provisions of Section 17(2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017, or clause (h) of Section 17(5) of the UPGST Act, 2017.*

4. The applicant has further submitted that-

(i) as per the nature of the proposed supply, the Applicant's activity is not covered within the scope of the Schedule of the UPGST Act, 2017 since such a supply is neither a transfer nor disposal of business assets nor supply of goods between either distinct person or the supply of goods by a principle to his agent or vice versa.

(ii) since the entire quantity of cigarettes supplied to the distributors including additional quantity, would be reflected in the invoice with taxable value hence, the taxable value so mentioned in the invoice would correspond to the entire quantity of cigarettes supplied under the said invoice which would include the additional quantity as well.

(iii) therefore, this cannot be a case of free supply without consideration and thus supply of original quantity along with the additional quantity would be supply as indicated in clause (a) to sub-section (1) of Section 7 of the UPGST Act, 2017.

(iv) as per sub-section (1) of Section 15, the value of supply of goods or services or both shall be the

transaction value, which is the price actually paid or payable for the said supply of goods or services or both when the supply and the recipient of the supply are not related parties and the price is the sole consideration for the supply.

(v) sub-section (3) of Section 15 categorically states that the value of the supply shall not include in discount which is given before or at the time of supply, if such discount has been duly recorded in the invoice issued in respect of such supply.

(vi) the Section 15 enumerates the items which are to be included in the value and the items which are not to be included in the value for the purposes of calculation of tax.

(vii) The taxable value shown in the invoice would be the transaction value which was attributable to the original quantity as well as the additional quantity as per sub-section (1) of Section 15 of the UPGST Act, 2017 for the simple reason that no additional consideration would be received from the distributor in respect of the additional quantity of cigarettes.

(viii) It is further stated that as per the definition of the deeming provision of "related person" neither the Applicant nor its distributor falls in the said category as the definition categorically emphasizes sole distributor and in the present case the distributor of the Applicant is not the sole distributor.

(ix) That in the present case the Applicant would be supplying the additional quantity of cigarettes to the distributor but without any proportional increase in the value of goods. Hence, the value attributable to such additional quantity of cigarettes can itself be considered as supply in terms of the provisions of sub-section (3) of Section 15 of the UPGST Act, 2017.

(x) It is submitted that in the proposed transaction, the additional quantity of cigarettes cannot be considered to be free supplies but against a consideration mentioned in the invoice on which GST alongwith applicable compensation cess would be discharged, such supply of additional quantity cannot be included in the category of exempted supplies or supply of free samples. Consequently, in respect of such supplies the mischief under sub-section (2) to Section 17 of the UPGST Act, 2017 or of clause (h) of sub-section (5) of Section 17 of the UPGST Act, 2017 will not be attracted.

(xi) The Circular No. 92/11/2019-GST dated 07.03.2019 has sought to clarify the issues with respect to tax treatment of sales promotion schemes under GST in order to ensure uniformity in the implementation of law. That the categories which had been dealt with were as under:

(a) Free samples and gifts

(b) Buy one get one free offer

(c) Discount including 'buy more', 'save more' offers

(xii) That the Applicant would like to rely upon scheme No. B, which pertains to 'buy one get one free offer' and the relevant extract of the said scheme has been reproduced herein below:

"B. Buy one get one free offer :

i. Sometimes, companies announce offers like 'Buy One, Get One free' For example, 'buy one soap and get one soap free' or 'Get one tooth brush free along with the purchase of tooth paste'. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which

are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration. In fact, 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. It can at best be treated as supplying two goods for the price of one.

ii. *****

iii. It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers."

(xiii) That the relevance of the scheme No.(b) qua the Applicant is that it provides extra quantity besides the normal quantity for which the payment is made. That in the scheme itself it has been clarified that it is not a case of one item being supplied "free of cost" without any consideration but a **"case of two or more individual supplies where a single price is charged for the entire supply"**. That in the light of the definition provided in the statute as also the clarification which has been provided by the circular, the proposed transaction of the Applicant can at best be treated as supplies two goods for the price of one. That even in the Applicant's case, the Applicant besides supplying the normal quantity of 100 packs would be supplying extra quantity of 30 packs. That even though it would not be an individual supplier of free goods i.e. 30 packs of cigarettes being without any cost but actually a single price would be charged for the two or more individual supplies. That in other words the price of 100 packs of cigarettes would be charged even though the supply would be that of 130 packs. That further as specifically clarified in Scheme-B(iii), the Applicant would also be eligible for availment of ITC goods for the inputs, input services and capital goods.

(xiv) That further in similar facts and circumstances this ***Hon'ble Authority for Advance Ruling, Maharashtra in the case of In Re: M/s. Golden Tobacco Ltd., reported as 2019 (27) GSTL 61 (AAR-GST)***, has categorically held as under:

"7. For reasons as discussed in the body of the order, the questions are answered thus -

The applicant is seller of cigarettes, and intends to offer extra quantity of cigarettes (quantity discount) in addition to normal quantity against same consideration, as a taxable supply to its distributors from their depot.

As per new marketing strategy devised by the applicant to promote its brands and also to increase its turnover the applicant proposes to distribute/promote some of their brands/products in the market, through their distributors. The price range of these cigarettes of a pack of 10 will be in the range of ₹ 50/-to 200/-(depending upon the brand). MRP will be printed on each pack of cigarettes. However, as marketing strategy to counter competition, instead of supplying a quantity of say 100 packs for an agreed price of say ₹ 5,000/-they would be supplying 110 packs of cigarettes without recovering any additional cost from the distributors. The applicant would be paying GST and Compensation Cess on ₹ 5,000/- at applicable rate.

Question (i) *In the above transaction, whether the extra packs of cigarettes would again be leviable to GST?*

Answer :- Answered in the negative in view of the discussions made above.

Question (ii) If yes, the taxable value which can be attributed to such extra packs of cigarettes for levy of GST?

Answer :- Not answered in view of answer to Question No. 1 above.

Question (iii) :- Whether extra packs of Cigarettes would be considered as exempt supplies or free samples and hence attract the provisions of Section 17(2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017 or clause (h) of Section 17(5) of the UPGST Act, 2017?

Answer :- The extra packs of cigarettes will not be considered as exempt supplies or free samples and hence the provisions of [Section] 17(2) read with Rule 42 of the UPGST Rules, 2017 or clause (h) of Section 17(5) of the UPGST Act, 2017 will not be applicable.”

(xv) That therefore, even the Applicant's situation is similar to the one illustrated in the aforementioned case decided by this Hon'ble Authority and the only difference being that the Applicant instead of supplying 10 extra packs is supplying 30 extra packs along with 100 packs of cigarettes of its brand.

5. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Assistant Commissioner, CGST & Central Excise Division II, Agra vide her C.No.- V(1)Misc/R-VII/Agra/07/2021/315 dated 25.08.2021 submitted as under-

(a) The applicant has sought advance ruling under Uttar Pradesh Goods and Service Tax Act, 2017 and accordingly it should be dealt by State GST authorities.

(b) Matter relates to supply of 30 additional pack of cigarettes free with each 100 pack of cigarettes to their distributors as a promotional scheme. The tax payment will be made on 100 pack of cigarettes and the distributor will be free to utilize this benefit as per their own. So, this is a question of valuation, taxability and availability of ITC on such free supply of cigarette which is very well covered under Section 15 & 17 of CGST Act, 2017.

(c) The issue has been further clarified by the CBIC vide Circular No. 92/11/2019-GST dated 07.03.2019 and 105/24/2019-GST dated 28.06.2019, so there seems no need to issue advance ruling in the matter.

(d) No any proceedings on the question raised in application is yet pending or decided by this office.

7. The applicant was granted a personal hearing on 28.08.2021, which was attended by Shri Priyadarshi Manish, Advocate & Authorized representative through video conferencing during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issue on which advance ruling required-

(7) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

We find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

10. We have gone through the submissions made by the applicant and have examined the same. We observe that the applicant has sought advance ruling on the following questions-

(i) In the above transaction whether the extra packs of cigarettes would again be leviable to GST.

(ii) If yes, the taxable value which can be attributed to such extra packs of cigarettes for levy of GST

(iii) Whether extra packs of cigarettes would be considered as exempt supplies or free samples and hence, attracts the provisions of Section 17(2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017, or clause (h) of Section 17(5) of the UPGST Act, 2017.

11. We find that the applicant have submitted that they would supply an additional 30 packs of cigarettes on purchase of 100 packs of cigarettes at the price of 100 packs of cigarettes. The jurisdictional officer has submitted that this is the question of valuation, taxability and availability of ITC on such free supply of cigarette which is covered under Section 15 and 17 of the CGST Act, 2017. The jurisdictional officer has further submitted that the issue has been further clarified by the CBIC vide Circular No. 92/11/2019-GST dated 07.03.2019 and 105/24/2019-GST dated 28.06.2019.

12. Section 15 of the CGST Act, 2017 deals with valuation of taxable supply. The relevant portion of the same is reproduced below-

15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include----

(3) 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

13. Circular No. 92/11/2019-GST dated 07.03.2019 issued vide F. No. 20/16/04/2018-GST is reproduced below:-

Subject: Clarification on various doubts related to treatment of sales promotion schemes under GST - Reg.

Various representations have been received seeking clarification on issues raised with respect to tax treatment of sales promotion schemes under GST. To ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter pre. it to as "the said Act) hereby clarifies the issues in succeeding paragraphs.

2. It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the "ITC) in relation to the said schemes are detailed here under:

A. Free samples and gifts:

.....

B. Buy one get one free offer:

i. Sometimes, companies announce offers like 'Buy One, Get One free" For example," buy one soap and get one soap free "or "Get one tooth brush free along with the purchase of tooth paste As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or service which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like "Buy One, Get One Free ; one item is being "supplied free of cost" without any consideration. In fact, 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. It can at best be treated as supplying two goods for the price of one.

ii. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

iii. It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers:

.....

D. Secondary Discounts

.....

14. The Para 2 (B) of the above said Circular is clearly applicable to the facts of the subject application. As the name itself says it all, buy one get one free means if the customer buys one product, one more of the same product will be given for free. Any supply made free of cost (i.e., without consideration) will not attract GST. However, under the 'buy one get one free' offer, two products are given at the price of one. In nut-shell, there is a supply of two products at the price of one. Hence in such a situation, GST liability will be analyzed as under-

- *The supply will be determined in terms of composite supply or mixed supply;*
- *GST rate will be determined as per the provisions of section 8 of the CGST Act.*

Now, coming to the availability of ITC, the referred circular clarifies that ITC of inputs/ input services/ capital goods used for supply such goods/ services will be available.

15. As such, the promotional scheme of additional 30 packs of cigarettes on every purchase of 100 packs of cigarettes for the payment of 100 packs of cigarettes is a taxable supply of 130 packs of cigarettes on the price of 100 packs of cigarettes. There would no tax liability on additional 30 packs of cigarettes supplied with 100 packs of cigarettes. Further, ITC shall also be available to the supplier for the inputs, input services and capital goods used in relation to Supply of goods or services or both as part of such offers.

16. We find that the applicant had made disclosure in Annexure I of Form GST ARA-01 that the goods (i.e. cigarettes) are manufactured by the applicant from their factory located in other state and are transferred to the applicant on stock transfer basis on payment of appropriate GST and compensation cess but contrary to their disclosure, it has been noticed that the cigarettes are being manufactured by the applicant at Industrial Plot No. 69-A, Toycity Ecotech-III, Greater Noida, Gautam Budh Nagar as per Invoice No. GTL/EX/046/21-22 dated 23.07.2021 of the applicant. Further, the applicant had made disclosure in Annexure II of Form GST ARA-01 that their distributor is not the sole distributor but the said disclosure is not supported by any agreement executed with distributors.

17. We find that the provisions relating to 'supply' with respect to related persons and / or distinct persons are specifically covered within schedule I of the **CGST Act, 2017** i.e. Activities to be treated as supply even if made without consideration. As per the said provisions, any supply of goods or services or both when made in the course or furtherance of business between the related persons or between the distinct persons, the same would be treated as supply even when the supply is made without consideration. As such, any transaction between the related persons or between the distinct persons, irrespective of the consideration, would be treated as 'supply' and hence taxable under GST. We are

passing the ruling in the instant case relying on disclosure of the applicant that the cigarettes would not be supplied through sole distributor (i.e. related person) and in case of any divergence from the said disclosure (i.e. in case of supply to related person or distinct person), the ruling will be void ab-initio as per Section 104 of the CGST Act, 2017.

18. In view of the above discussions, we, both the members unanimously rule as under;

RULING

Question (i) In the above transaction, whether the extra packs of Cigarettes would again be leviable to GST?

Answer :- Answered in the negative in view of the discussions made above.

Question (ii):- If yes, the taxable value which can be attributed to such extra packs of Cigarettes for levy of GST?

Answer :- Not answered in view of answer to Question No. 1 above.

Question (iii):- Whether extra packs of Cigarettes would be considered as exempt supplies or free samples and hence attract the provisions of Section 17 (2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017 or clause (h) of Section 17 (5) of the UPGST Act, 2017?

Answer :- The extra packs of cigarettes will not be considered as exempt supplies or free samples and hence the provisions of 17(2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017 or clause (h) of Section 17 (5) of the UPGST Act, 2017 will not be applicable.

Citations: in 2022 (2) TMI 825 - AUTHORITY FOR ADVANCE RULING, UTTAR PRADESH

1. [2019 \(6\) TMI 1357 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA](#)