

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 28 / 2019

Date : 12-09-2019

Present:

1. **Sri. Harish Dharnia,**
Additional Commissioner of Central Tax, Member (Central Tax)
2. **Dr. Ravi Prasad M.P.**
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Surfa Coats (India) Pvt Ltd, No. 639, 46 th A Cross, 3 rd Block, Rajajinagar, Bengaluru - 560010
2.	GSTIN or User ID	29AAECS3469C1Z9
3.	Date of filing of Form GST ARA-01	26.03.2018
4.	Represented by	Sri Gopalakrishna H M, Deputy Manager (Accounts)
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore West Commissionerate.
6.	Jurisdictional Authority - State	LGSTO-140, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs.5,000/- under KGST Act vide CIN UBIN18032900289522 dated 23.03.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017

1. M/s Surfa Coats (India) Pvt. Ltd., (called as the 'Applicant' hereinafter), No.639, 46th Cross, 3rd Block, Rajajinagar, Bengaluru - 560010, having GSTIN number 29AAECS3469C1Z9, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Private Limited Company and is registered under the Goods and Services Tax Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether the applicant is eligible to claim the GST Input tax credit on the items purchased for furtherance of business?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that they are into the business of manufacturing decorative paints meant for interiors as well as exterior surfaces and have three manufacturing plants at Peenya, Bengaluru to cater the market needs from time to time. The manufactured paints are marketed through their sales offices spread across in Southern and Western India.
- b. The applicant submitted that like any other industry, Paint Industry (i.e. the applicant company in particular) always has to face the heat of macroeconomic factors to sustain in the industry as an ongoing concern. Small scale industries also have to face competition from giants to market its products extensively. If small scale industry has to survive in the industry, then their pricing should be much lower than leading paint companies (prices plus incentives given to dealers by various means).
- c. The applicant frames incentive schemes, depending on the market conditions, to motivate dealers to lift their products. The titles of the schemes read as Painters Schemes, Dealers Incentive Schemes, Gold Schemes, Foreign and Local Trip Schemes etc.. The incentives are given subject to fulfilment of terms laid down in each such scheme.
- d. The incentive, once computed in terms of above schemes, is given mostly in kind. The applicant purchases TVs, Refrigerators, Washing machines, Mixers, Wet Grinders, Watches, Mobiles, Gold Coins, Bed Sheets, Rice bags, T-Shirts, Rain Coats, etc., for distribution to Painters and dealers in connection with the above said incentive schemes.

- e. The applicant submitted, while explaining various Painter schemes that the Painters play a vital role to any paint company to market their products. Painter is similar to middleman between customer and dealer/company. Customers always tend to listen to painters, as they feel that the painter is well versed about the quality of paint technically. Therefore, most of the paint companies incentivize these painters to make their presence in the market. To capture each of the painter's purchase, in general, every company introduces paint scheme. Whenever paint is marketed through a painter then details of such painter is tracked through a scheme called "Painter Scheme". Once in a given period, the points accumulated by each of the painters are computed and compensated them suitably (according to their liftings) by way of giving them promotional items as indicated above.
- f. The applicant also explained that they also have a Gold Scheme in which gold is given to dealers once the scheme is over as per actual sale in terms of targets fixed. The quantum of gold is specified in the incentive scheme in line with actual sales done by the dealers.
- g. The applicant states that they used to get the GST input tax and bills from Composition taxable persons for procuring the above mentioned incentive items when they are purchased and these items are used in the course of furtherance of business only and not for sale.
- h. The applicant, in view of the above, desires to have a ruling on whether Input tax credit is admissible, as these incentive items are bought and given in terms of schemes to promote company's products only.

PERSONAL HEARING / PROCEEDINGS HELD ON 03.04.2018.

4. Sri Gopalakrishna H M, Deputy Manager (Accounts) and duly authorised representative of the applicant appeared for personal hearing proceedings held on 03.04.2018 & reiterated the facts narrated in their application.



5. FINDINGS & DISCUSSION:

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Gopalakrishna H M, Deputy Manager (Accounts) and duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

5.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 provisions under the KGST Act.

5.3 The Applicant seeks advance ruling on the question that *Whether the applicant is eligible to claim the GST Input tax credit on the items purchased for furtherance of business.*

5.4 The business/transactions of the applicant are examined and observed that they supply paints, manufactured by them, to persons on discharging applicable GST thereon. The applicant is claiming input tax credit of tax paid on the raw materials and any other input materials/capital goods. They also give incentives to motivate the dealers subject to fulfillment of terms laid down under various schemes, which are independent of the tax payable/paid.

5.5 The applicant, in order to promote the business, gives incentives/gifts to those persons who assist in the marketing of the products i.e. dealers, painters etc., in the form of goods and services, which are duly tax suffered & procured from other registered suppliers. The said goods/services are distributed to the persons as gifts/incentives without receiving any consideration for the same. Hence the goods and services so procured and disposed off/distributed as incentives/gifts are disposed without any consideration and hence do not qualify to be a supply in terms of Section 7 of the CGST Act. Further no GST is being paid on disposal of the said gift items.

5.6 In this regard we drawn attention to clause (h) of Sub-section (5) of Section 17 of the CGST Act, 2017 and the KGST Act 2017, which states as under:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a)

...

...

...

...

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i)”

5.7 It is clearly evident from above that Section 17(5)(h) of CGST Act 2017 does not allow credit on any goods disposed by way of gift or free samples, whether or not in the course or furtherance of business. It is an admitted fact that the applicant herein purchases the items to be disposed as gifts under various incentive schemes to dealers/painters etc.. Therefore the applicant is not entitled to avail ITC on such items.

5.8 Further, at times the applicant also offers foreign and local trip schemes as incentives, for which they procure various tax suffered services. The free travel services so provided are without any consideration and hence do not qualify to be a “supply” in terms of Section 7(a)(1) of the CGST Act 2017 and Schedule I to the CGST/ KGST Act 2017.

5.9 In this regard we draw attention to the Circular No.92/11/2019-GST dated 07.03.2019, issued by the CBIC, wherein, at para (A)(ii), it is carified that *“input tax credit 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”* In the instant case the applicant offers free foreign / local trips, as incentives, to the dealers / painters etc., without any consideration. Therefore the input tax credit on the services procured (input services), for offering aforesaid services of free trips, is not available to the applicant.



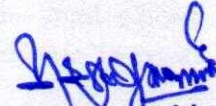
6. In view of the foregoing, we rule as follows

RULING

The applicant is not eligible to avail input tax credit on the inward supplies of goods and services which are attributable to the incentives provided in the form of gifts of goods and services to the painters and dealers and other persons under the CGST / SGST / IGST Act.


12.09.2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : 12-09-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone,
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore West
Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-140, Bengaluru

