

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, 'H' Wing, Mazgaon, Mumbai - 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AACCB1830G1Z3(GSTIN) biostadt_mh (User-id)
Legal Name of Applicant		BIOSTADT INDIA LIMITED
Registered Address/Address provided while obtaining user id		6th Floor, 602-A, Poonam Chambers, Dr. A.B. Road, Worli, Maharashtra - 400018.
Details of application		GST-ARA, Application No. 72 Dated 23.08.2018
Concerned officer		Assistant Commissioner, Division-VIII, CGST & C. Ex., Mumbai Central GST Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/ Manufacturing , Wholesale Business
B	Description (in brief)	The Applicant is inter alia engaged in the business of developing, manufacturing and distributing crop protection chemicals and hybrid seeds.
Issue/s on which advance ruling required		(iv) admissibility of input tax credit of tax paid or deemed to have been paid (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by BIOSTADT INDIA LIMITED, the applicant, seeking an advance ruling in respect of the following questions.

- 1.1. The question or issue before Your Honor for determination is whether Input Tax Credit ("ITC") can be claimed by the applicant on procurement of Gold coins which are to be distributed to the customers at the end of scheme period for achieving the stipulated lifting or payment criteria?
- 1.2. The question or issue before Your Honor is not restricted to the said scheme only. The applicant notifies schemes with similar conditions periodically. So whether the ITC can be claimed in all such similar schemes.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-
STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS SOUGHT

1. This Application is being filed by M/s. Biostadt India Limited ('the Applicant'/the Company'). The Applicant, having Good and Service Tax (GST) Registration No. 27AACCB1830G123 is inter alia engaged in the business of developing, manufacturing and distributing crop protection chemicals and hybrid seeds.
2. Biostadt India Limited has been serving the farming community for over three decades. The company provides a helping hand to the farmers by providing them with top-of-the-line agricultural inputs and services.
3. Over a period of time, the applicant has diversified into a range of seaweed-based biotechnological inputs using fermentation technology, under the well-known brand 'Biozyme'. They also deal in crop protection chemicals - insecticides and pesticides and has made its foray in hybrid seeds market.
4. The manufacturing facilities of the applicant are multi-locational and are very well-equipped with state-of-the-art technology and testing equipment which produce quality products.
5. In order to ensure availability of various products and services, the applicant has extensive network which includes 3 mother depots, 22 stock points and a network of more than 2000 distributors and above 25000 retailers across the country. Such a closely held network of distributors and retailers has constantly helped the company in achieving their long-term vision and mission.
6. It is a well proven fact that the channel of distribution plays a pivotal role in achieving the marketing objectives of the company. In order to achieve sales and marketing objectives, the applicant has launched various target based - sales incentive schemes for their distributors and retailers (customers). These schemes help the customers to be motivated to achieve a specified target and in turn helps the company to achieve their targets.
7. The applicant has PAN-India presence and has operations spread out in more than 15 states. The applicant was erstwhile registered under Central Excise law, Service tax legislation and respective State Value Added Tax laws and now is registered under Good and Service Tax (GST).
8. This Application is being filed by M/s. Biostadt India Limited which inter-alia has launched a new sales promotion scheme namely the "Kharif Gold Scheme 2018" for their customers. The said sales promotion scheme helps the company in achieving their sales and collection targets. The terms and conditions of the scheme are as under:
 - a. The said scheme will be in force for the period June 2018 to August 2018.
 - b. The scheme is divided into two parts:

Lifting of products:

Customers who purchase the below mentioned products on or above their below mentioned quantity shall be entitled to one 10 grams Gold coin. The products that need to be lifted during the scheme are as under:

Products	Qty. (kgs/ltrs)
Biozyme Liquid	250
Biozyme Granules	1000
Amaze-X	200
Rejoice	30
Roko	50
Biomycin	50
Maiden	20



Collections:

If the customers after lifting the products from the applicant, make payment in the prescribed staggered manner shall be entitled to one 8 grams Gold coin. The payment schedule for the customers during the scheme is as under:

Month	Collection Amount (Rs.)
June	1 lakh
July	1.5 lakh
Aug	1.5 lakh
Total	4 lakh

- c. Only the above mentioned products are eligible under the scheme.
- d. Stock returns are not allowed under the said scheme.
- e. No other discounts are eligible under the said scheme.
- f. Both the legs of the scheme are independent of each other. Customer satisfying any one leg will be entitled to reward of that leg only.
- g. A meeting will be called at the end of the scheme period and customers who have satisfied either of the lifting or collection criteria shall be entitled to attend such meeting.
- h. During the meeting the customer shall be rewarded with the 8gms or 10gms gold coin depending upon the criteria fulfilled by him.
10. The above mentioned scheme is in force. The applicant will be procuring gold coins from jewelers which are to be distributed at the end of the scheme. As per notification 1/2018 - CGST (Rate) dtd. 28.06.2017, gold is leviable to GST at the rate of 3 percent.
11. The applicant intends to maximize their sales and minimize their outstanding collection through the operation of "Kharif Gold Scheme 2018".

Statement of relevant facts having a bearing on the question(s) raised.

1. ISSUE FOR DETERMINATION

- 1.1. The question or issue before Your Honor for determination is whether Input Tax Credit ("ITC") can be claimed by the applicant on procurement of Gold coins which are to be distributed to the customers at the end of scheme period for achieving the stipulated lifting or payment criteria?
The question or issue before Your Honor is not restricted to the said scheme only. The applicant notifies schemes with similar conditions periodically. So whether the ITC can be claimed in all such similar schemes.

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS SOUGHT

2. SUBMISSIONS OF THE APPLICANT

- 2.1. The applicant submits the following in their support:
Section 16(1) of CGST Act states that every registered person, subject to such conditions and restrictions as may be prescribed and in manner specified, shall be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business.
- 2.2. Section 16(1) is an empowering section which creates a vested right upon the registered person to claim credit of input tax on goods or services or both procured by him provided they are used or intended to be used in the course or furtherance of his business.
- 2.3. Following are the important limbs to the qualifying section 16(1):

• Registered Person:

Section 2(94) of the CGST Act states that registered person means a person registered under Section 25 of the CGST Act.

As stated earlier, the applicant is registered under the GST law.

Input Tax:

Input tax as defined under section 2(62) of the CGST Act includes CGST, respective SGST and UTGST, IGST and so on.

Section 2(63) of the CGST Act defines Input tax credit as the credit of input tax.

Inputs is defined under Section 2(59) of the CGST Act to mean any goods other than capital goods which are used or intended to be used by a supplier in course or furtherance of business.

Gold coins are inputs for the applicant and GST levied on such purchase qualifies to be an input tax for the purpose of Section 16(1) read with Section 2(62) of the CGST Act.



In course or furtherance of business:

The notable requirement under Section 16(1) of the CGST Act is that the credit of input tax claimed on a supply of goods or services should be **used in course or furtherance of the business**. While the term business is defined under CGST act, the phrase 'in course or furtherance of business' is not defined in the law.

Dictionary meaning of the term "furtherance" implies advancement, promotion of scheme, etc. Therefore furtherance of business would imply advancement of business, promotion of business. Any activity carried on with a purpose to achieve business objectives, business principles, business continuity and stability would per se amount to an activity in course or furtherance of business.

The applicant has launched Kharif Gold scheme with an intention to maximize the sales and collections of the company. The scheme so implemented grants an advantage to the applicant over other competitors in the market. These schemes ensure brand loyalty and market loyalty which are the important aspects of any business. Hence it would be reasonable to conclude that the scheme launched by the applicant is "in course or further of applicant's business".

2.4. Section 16(2) of the CGST Act provides for conditions which need to be satisfied for claiming ITC on supply of goods or services or both. These conditions are with respect to possession of tax invoice, receipt of goods, payment of tax and filing of returns.

The applicant contends that he has satisfied the conditions as laid down in Section 16(2) and is eligible to claim ITC on purchase of gold coins.

2.5. In accordance with the above paras, applicant strongly feels that he is eligible to claim ITC on procurement of gold coins as the requirements of Section 16(1) and 16(2) have been fulfilled. The only criteria that's need to be evaluated is the restrictions laid down in Section 17 which provides for apportionment of credits and blocked credits.

2.6. Section 17(5) of the CGST Act provides for blocked credits. Section 17(5) contains a non-obstante clause with respect to Section 16(1) of the CGST Act. Hence if any of the clause under Section 17(5) is satisfied then ITC shall be specifically disallowed even if it was eligible at the first stage i.e. under Section 16(1).

2.7. The applicant reproduces the relevant extracts of Section 17(5) as under:

"17(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).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g).....

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

(i)....."

On a plain reading of aforesaid provisions, one may reasonably conclude that ITC needs to be reversed in respect of gold coins which are disposed of by way of gifts or free samples. However it is imperative to understand the ambit of term "gifts".

2.9. The term gift is not defined under CGST Act. Hence reference needs to be made to other statutes or jurisprudence available on the same.

The Gift-Tax Act (18 of 1858) had defined the word gift to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth.

The Honorable Supreme Court cited the definition of 'gift' from Corpus Juris Secundum, Volume 38 in the case of *Sonia Bhatia v. State of UP* [1981 SCR (3) 239, 1981 SCC (2) 585] as follows:

"A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation therefor. A 'gift' is a gratuity and an act of generosity and does not require a consideration, but there can be none; if there is a consideration for the transaction, it is not a gift."

2.10. On the basis of above jurisprudence, one can reasonable conclude that gift is a gratuity and does not require any consideration. If a consideration is attached to a transaction, then it cannot be termed as a gift. Emotional consideration such as love, affection, etc. may be attached to a gift but there cannot be a monetary consideration to a gift.

It may also be noted that gift cannot arise out of a contractual obligation. If a supply is made under a contractual obligation then it cannot be termed as gift.



Supplies made out of non-legal considerations such as love, affection, etc. can only be termed as gifts.

- 2.11. The applicant has launched a sales promotion scheme. These sales linked scheme are purely for advancement of company's business. It is a known principle that "nothing comes free in business". Each and every act done for business comes with a consideration. Applying same analogy, gold coins are not given away freely to the customers.

The applicant has a contractual arrangement with the customer wherein if he purchases certain amount of company's product or makes payment in a prescribed manner then he shall be entitled to a gold coin of specific weight.

- 2.12. Gold coin will not be available to the customer unless he satisfies the criteria laid under the scheme. Giving away gold coins to customer cannot be termed as "voluntary" act of the applicant. The applicant strongly contends that the gold coins distributed to customers at the end of scheme period cannot be qualified as "gift". Since they cannot be qualified as gift, disallowance under Section 17(5) will not be attracted. Hence, the applicant should be entitled to claim ITC of gold coins purchased for effective implementation of the scheme.

3. PRAYER

In light of the above, a Ruling is sought from the Honorable Authority on eligibility of ITC on procurement of gold coins for distribution to customers under the sales promotion scheme.

Kharif Gold Scheme 2018

Scheme Period: June to Aug 2018

Products	Qty.(kgs/ltrs)
Biozyme Liquid	250
Biozyme Granules	1000
Amaze-X	200
Rejoice	30
Roko	50
Biomycin	50
Maiden	20

Scheme Benefit

10 GM Gold Coin for lifting
Products

8 GM Gold Coin for the
payments

Collections:

Month	Collection Amount (Rs.)
June	1 lakh
July	1.5 lakh
Aug	1.5 lakh
Total	4 lakh

Lucky Draw - Surprise Gifts

Payment	No. of Coupons
1 lakh	1
2 lakh	3
3 lakh	4
4 lakh	6

Terms & Conditions:

- Only above listed products are eligible for the scheme
- Gold price is calculated @ Rs. 3200/-per gm
- No other discounts are eligible under the scheme
- Scheme Period is from June'18 to Aug'18
- Customers who lifted the products as per the scheme and made payments as per the scheme are invited for meeting.
- Prices of the products vary for different SKUS
- No Stock Returns under the scheme.
- In case of any discrepancy company reserves the right to modify/cancel the scheme without prior notice

THE CENTRAL GOODS AND SERVICE TAX ACT (CGST), 2017

Relevant provisions under CGST Act, 2017:

1. Inputs [Section 2(59)]:
"Input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.
2. Input Tax [Section 2(62)]:



"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

- the integrated goods and services tax charged on import of goods;
- the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- 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
- 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;

3. Input Tax Credit (Section 2(63)1):

"Input tax credit" means the credit of input tax

4. Registered Person (Section 2(94):

"Registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

5. Eligibility for taking input tax credit (Section 16(1):

(1) 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.

6. Conditions for taking input tax credit (Section 16(2):

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39;

7. Blocked credits (Section 17(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) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both

(i) 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;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such 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 part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;



- (C) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (C) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

- (e) goods or services or both on which tax has been paid under section 10;
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
- (g) goods or services or both used for personal consumption;
- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
- (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes -

- i. land, building or any other civil structures;
- ii. telecommunication towers; and
- iii. pipelines laid outside the factory premises.

THE GIFT TAX ACT, 1958

Relevant provisions under the Gift Tax Act, 1958:

1. Gift (Section 2(xii)):

"Gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section;

[Explanation.—A transfer of any building or part thereof referred to in clause (iii), clause (iiia) or clause (iiib) of section 27 of the Income tax Act, by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money's worth, shall be deemed to be a gift made by such person;]

Additional submissions dated 19.11.2018

We reiterate our submissions dated 23.08.2018, 10.09.2018 & in the course of preliminary hearing wherein we have sought ruling on admissibility of input tax credit of tax paid on purchase of gold coins for our sales incentive scheme.

Without prejudice to written submissions dated 23.08.2018, we further submit that:

- **Tax paid on purchase of Gold coins qualifies as Input Tax:**
- Input tax as defined under section 2(62) of the CGST Act includes CGST, respective SGST and UTGST, IGST and so on.
- Section 2(63) of the CGST Act defines Input tax credit as the credit of input tax.
- Inputs is defined under Section 2(59) of the CGST Act to mean any goods other than capital goods which are used or intended to be used by a supplier in course or furtherance of business.
- Gold coins are inputs for the applicant and GST levied on such purchase qualifies to be an input tax for the purpose of Section 16(1) read with Section 2(62) of the CGST Act.

- **Gold coins not given away as gift:**

--- A Section 17(5) of the CGST Act provides for blocked credits.

--- As per section 17(5)(h) registered person is not entitled to claim ITC of tax paid on goods given away as gift or free sample.

--- Erstwhile Gift Tax Act defined gift to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth.

--- Honorable Supreme Court cited the definition of 'gift' in the case of *Sonia Bhatia v. State of UP* [1981 SCR (3) 239, 1981 SCC (2) 585] as a voluntary transfer of property by one to another, without any consideration or compensation therefor. A gift is a gratuity and an act of generosity and does not require a consideration, but there can be none; if there is a consideration for the transaction, it is not a gift.

--- It is a settled principle that "Gift cannot arise out of a contractual obligation" and "nothing comes free in business".

--- The Australian High Court in the case of *commissioner of Taxation (Cth) v. McPhail* [1968] 41 ALJR 346 held that to constitute a 'gift' the property should be transferred voluntarily and not as a result of a contractual obligation. The copy of said judgement is enclosed at Annexure "B". - Please refer the last para on page 4 of the said order.



-- We have entered into a contractual arrangement with the customer wherein if he purchases certain amount of company's product or makes payment in a prescribed manner then he shall be entitled to a gold coin of specific weight.

-- Gold coin will not be available to the customer unless he satisfies the criteria laid under the scheme. Giving away gold coins to customer cannot be termed as 'voluntary' act of the applicant and in turn cannot be termed as gift distributed to customer

Considering the above conditions, we earnestly request your good offices to consider our application for allowability of Input Tax Credit on gold coins distributed as per terms and conditions of a scheme.

→ Value of Gold coins is not to be included in the value of goods:

-- Section 15(1) of CGST Act provides that value of supply of goods shall be the transaction value i.e. price actually paid or payable for said supply of goods where the supplier and recipient of supply are not related and price is the sole consideration for the supply.

-- Related persons is defined in explanation to section 15 of CGST AGNES

-- Our customers do not fall under any of the said criteria of related person

-- Price of all the products are pre-defined and customers are obliged to pay that price for purchase of products.

-- Price is the sole consideration received from the customers for sales made by us.

-- Section 15(1) criteria is satisfied in our case and hence value of supply of goods should include only the price that is payable by the customer. Value of gold coins cannot be clubbed with value of supply made by us.

-- Moreover, cost of gold coin to be distributed at the end of scheme is factored in sales price charged by us. As a result, we are indirectly discharging GST liability on gold coin supplied by us.

-- Further none of the conditions mentioned U/s 15(2) are satisfied to include the value of gold coin in the value of supply.

-- We would further submit that when a 'commercial common sense approach' is adopted, the term 'free' is being used in a marketing sense, but the economic and commercial reality of the offer is that value of gold coin is already included in the value of goods supplied to the customer.

-- We rely on the judgement of Hon'ble first tier tax tribunal in United Kingdom in the case of *Marks & Spencer PLC* in support of our contention above. The copy of said judgement is enclosed at Annexure "B". Hence reading Section 15 in conjunction with Section 2(31) it is abundantly clear that value of coin distributed as per terms of a scheme are not to be included in value of goods.

Without prejudice to the above submissions, we would place on record that the application has been filed for ruling on allowability of Input Tax Credit and not the valuation.

We hereby fervently pray your good office to take cognizance of the above referred submissions and submissions dated 29.08.2018 & 10.09.2018 and accord much awaited justice to law abiding tax payer.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

Reference Application No:72 Dated 23.08.2018

I. Comments on Annexure-I of Submission

1. Annexure I contains 'Statement of Relevant Facts Having a Bearing on the Questions on which the Advance Ruling is sought. This office offers no comments.

II. Comments on Annexure-II of Submission

1. Annexure II contains 'Issues for Determination'. This office offers no comments.

III. Comments on Annexure-III of Submission

Para 2.1: No comments.

Para 2.2: No comments.

Para 2.3 & Para 2.4 :

1. This office contends that the 'Gold coins' to be distributed to customers of M/s Biostadt India Limited at the end of the kharif Gold Scheme described in Annexure I of their submission are NOT INPUTS and hence, GST paid on such a purchase does not qualify to be an input tax for the purpose of Section 16(1) read with Section 2(62) of the CGST Act 2017 (hereinafter referred to as 'the Act').

2. The basic provision relating to the claim of input tax credit is covered u/s 16 of the CGST Act 2017. The section heading reads as 'Manner of taking input tax credit'. The term 'input tax credit' has also been defined U/S 2(63) of the CGST Act 2017 as credit of "input tax" as defined in section 2(62).



3. "Input" is defined u/s 2(59) of CGST Act 2017 to mean any goods other than capital goods which are used or intended to be used by a supplier in the course or furtherance of business
4. What is important in the definition of input is the use of the phrase "in the course or furtherance of business". While the term "business" has been defined, the phrase "in the course or furtherance of" has not been dealt with in any manner under the GST law. Hence, there is no definite yardstick to find out whether some activity is being carried out in the course or furtherance of a business or not. Each case would need to be examined, based on its facts, on the touchstone of the definition of inputs'.
5. In the course or furtherance' is not defined, but is broad enough to cover any supplies made in connection with the business. It is important to note that only supplies received by a taxable person that are used/ consumed in the course or furtherance of business are eligible for claiming input tax credit. This impacts the eligibility to claim input tax credit. Hence, it becomes important for an entity to justify that a particular act is done in the course and furtherance of its business goals and intentions.
6. We can determine whether a activity is undertaken in the course or furtherance of business on the basis of few principles:
 - a. Was the activity undertaken in line with the basic business model?
 - b. Is the activity needed for continuity in the supply?
 - c. Is the activity mainly concerned with the making taxable supply for consideration?
7. Therefore, if some supply is either used exclusively in the course/furtherance of business or partly used in the course/furtherance of business, the basic provision enabling the claim of credit does not contain any restrictions. The restriction would apply only in cases where the supply is not to be used exclusively in the course or furtherance of business.
8. From the above it is clear that the gold coins on which assessee wants to avail ITC credit is not exclusively used during the course of furtherance of business as the assessee's business is exclusively related to manufacture and distribution of crop protection chemicals and hybrid seeds 'Gold coins' to be distributed to customers of M/s Biostadt India Limited at the end of the Kharif Gold Scheme described in Annexure: 1 of their submission are not inputs because:
 - a. Distribution of gold coins is not in line with the basic business model.
 - b. The gold coins are not essential for continuity in supply.
 - c. The distribution of gold coins are not concerned with the making of taxable supply for consideration unless we look as this distribution as a hidden discount'.

The conditions, laid down in Section 16(2) of the Act have been satisfied but not the basic requirement as per Section 16(1) of the Act. Hence, the contention of the Applicant is not acceptable. Para 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11 and 2.12:

Clause (b) of Section 17(5) of CGST Act 2017 stipulates that the input tax credit with respect to the goods' disposed of by way of gift shall not be allowed. Or in other words, it is stipulated that no ITC on any goods can be availed, if they are given as gifts, whether or not in course of furtherance of business.

ITC on goods given away or disposed as "gifts" should not be available when no tax is being paid on their disposal. The logic of satisfying Section 16 is of no avail to earn this credit lawfully, because Section 17(5) itself starts with a non obstante clause, which means even if Section 16 allows, Section 17(5) shall block. Moreover, Section 17 (5) is a specific provision because it is an established principle that specific provisions prevail over general provisions. This doctrine has always been upheld. The cases on the subject will be found collected in the third edition of Maxwell which is *generalia specialibus non derogant* - i.e. general provisions will not abrogate special provisions'. Similar application arises when there are two provisions under the same statute also, one of which is specific and the other general. If there is dispute between Section 16 and Section 17(5), Section 17(5) should prevail. It would be appreciated that Section 16 is a general provision and Section 17(5) is specific. Section 17(5) over rides Section 16 in clear words. Furthermore, though 17(5) is non obstante clause unless Section 16 conditions fulfilled ITC is not eligible and once eligible if not hit by 17(5), only then ITC can be availed.
3. The basic intention behind Section 17(5)(h) seems to be that it tries to restrict people from giving benefits or exchange consideration in kind (in lieu of cash) in the garb of gifts to avoid valuation and thus avoid levy of tax. In the instant case, the Gold Coins are gifts/ free supplies in course of business. If consideration for these goods is not charged directly; they shall qualify as "gifts" and ITC shall not be eligible.



4. If these 'gold coins' are not treated as gifts, another argument can be considered then as 'discount' / 'hidden discount' and the said discount satisfies the conditions under Section 15(3), i.e. the discount (whether in full or in part) arises and is recorded as a contractual obligation under specific invoice(s), ITC shall be available on such goods. It may be worthwhile to show such goods under the respective invoice/credit note after establishing on record, the agreement under which it arises. As soon as an obligation is attached, the commodity loses its identity as a 'gift' and no denial of ITC can arise under Section 17(5) in such case:
5. If it is so opined that the said gifts have an extra commercial consideration, then they shall be subjected to GST when given away or disposed off. In this case, ITC of the same shall also be available, because as soon as a commercial value is assigned to any transaction, it shall not remain a gift anymore. However, in this case, the value shall be required to be assigned in compliance with Section 15 read with the Valuation Rules and not hypothetically. GST payable on the supply should take into consideration this adjusted value.
6. In case the gold coins are treated as gift, the input Tax Credit is blocked as per Section 17(5) of CGST Act, 2017, if the gold coins are not treated as gift, and treated as 'Discount' then the provisions under Section 15(3) of CGST Act, 2017 that deals with discount will be applicable.
7. The applicant quoted Apex Court's judgment in the case of *Sonia Bhatia Vs. State of U.P.* 1981 (SCR (3) 239, 1981 SCC (2) 598] and contended that it is applicable to their case. The facts of the case were totally different and also the said judgment was delivered under a different legislation and therefore, the same cannot be made applicable to the facts of this case which is being adjudicated under GST ACT. In the case of *KONE ELEVATOR INDIA PVT LTD VS. STATE OF TAMIL NADU* as reported in [2014(304) ELT 161. (SC) it has been held that, it should be strict and literal, what is applicable in one taxing statute may not be applied to another taxing statute (Per: F.M. Ibrahim Kalifulla.) (Para-84). Hence, the case law, cited by the applicant in this respect is not acceptable.
8. In case the Advance Ruling Authority accepts the contention of the applicant and allows the availment of ITC on gold coins, then the accounting of the stock and disbursement of gold coins should be required to be maintained.

In the light of the above discussion, we pray that the Honorable Advance Ruling Authority may pass an order as deemed legal and necessary in the interest of revenue.

This reply is made with the approval of the Additional Commissioner, Mumbai Central CGST & C. Ex. Commissionerate



04. HEARING

The Preliminary hearing in the matter was held on 18.09.2018, Sh. Parag Mehta, C.A. along with Sh. Jinesh Shah, C.A. and Sh. Prashant Nagar, manager appeared and requested for admission of application as per details in their application. During hearing Jurisdictional Officer Sh. Vivek Anand Assistant Commissioner, Division-VIII, CGST & C. Ex., Mumbai Central GST Commissionerate appeared and stated that they would making submissions in due course.

The application was admitted and called for final hearing on 11.12.2018, Sh. Parag Mehta, C.A. along with Sh. Jinesh Shah, C.A. and Sh. Prashant Nagar, manager appeared made oral and written submissions. The Jurisdictional Officer Sh. Vivek Anand Assistant Commissioner, Division-VIII, CGST & C. Ex., Mumbai Central GST Commissionerate appeared made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is in respect of a future transaction which would be on the lines thus -

The applicant is engaged in the business of developing, manufacturing and distributing crop protection chemicals and hybrid seeds and in order to achieve sales and marketing

objectives, they have launched various target based - sales incentive schemes for their distributors and retailers (customers) to achieve a specified target and in turn helps the company to achieve their targets. The subject application is in respect of a sales promotion scheme known as "Kharif Gold Scheme 2018", which has been floated by them for their customers and is of two types. In the first case, their Customers who purchased certain products on or above a certain quantity would be entitled to one 10 grams Gold coin. In the second scenario, their customers who, after lifting the products from the applicant, made certain minimum payments and above would be entitled to one 8 grams Gold coin. Both the schemes were to be independent of each other. For both the schemes gold coins will be procured from jewelers and since gold is leviable to GST at the rate of 3 percent the applicant has raised the question i.e whether Input Tax Credit ("ITC") can be claimed by them on procurement of the said Gold coins. As per their submissions, the said Gold coins are inputs for them and GST levied on such purchase qualifies to be an input tax for the purpose of Section 16(1) read with Section 2(62) of the CGST Act.

The jurisdictional officer has also made submissions and has opined that the 'Gold coins' to be distributed as mentioned above, are not inputs and hence, GST paid on such a purchase does not qualify to be an input tax for the purpose of Section 16(1) read with Section 2(62) of the CGST Act 2017 (hereinafter referred to as "the Act"). It has been submitted that the gold coins are not inputs because the said Distribution of gold coins is not in line with the basic business model, the gold coins are not essential for continuity in supply and the distribution of gold coins are not concerned with the making of taxable supply for consideration unless the distribution is looked as a hidden discount.

We find that the applicant has floated the subject scheme for the period June, 2018 to August, 2018 only, by way of which gold coins of different denominations would be given to those customers who lifted a certain quantity of products or made a certain amount of payment. Thus it is seen that it is only those specific customers who fulfill the conditions would be able to avail the benefit of the subject scheme. The applicant has submitted that the said Gold coins are inputs for them and GST levied on such purchase qualifies to be an input tax for the purpose of Section 16(1) read with Section 2(62) of the CGST Act.

We find that the provisions of ITC are governed by Sections 16 and 17 of the CGST Act, 2017. In order to avail ITC, two basic provisions need to be complied with, i.e. Section 16 and Section 17. As per Section 16, a taxpayer is entitled to take credit of input tax charged on any supply of goods or services to him which are used in the course or furtherance of his business. i.e this section disallows ITC against input goods/services used for non-business purposes. Section 17 (5) of the CGST Act deals with Blocked credits and begins with a non obstante clause, which means even if Section 16 (1) allows ITC, Section 17(5) shall block in respect of certain cases.

Clause (h) of Section 17(5) deals with ITC on gifts and as per Section 17(5)(h), "Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

We will therefore first discuss whether the gold coins in the subject case can be treated as a gift or not. The word 'gift' has not been defined in the CGST Act and the Gift-Tax Act (18 of 1858) had defined the word gift to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth. It is seen from the definition that the transfer i.e the gift given in such a case has to be voluntary. The applicant has submitted that they have a contractual arrangement with the customer wherein if he purchases certain amount of company's product or makes payment in a prescribed manner then he shall be entitled to a gold coin of specific weight. A contractual arrangement implies especially in view of the magnitude and area of the applicant's business that, it should also be agreed by the customer in writing to such scheme floated by the applicant. We find that they have not submitted any such contract/agreement and in support of their contention, as Exhibit 'A' they have only submitted a brochure/writeup/invitation with the heading Kharif Gold Scheme 2018. Hence we find that the gold coins are not given to their customers under any contractual obligation and are voluntarily given on certain conditions achieved by their customers.

In the present scenario we will try to understand the word 'gift' in the common parlance as it is also used in the present day. There are several schemes advertised in the market by business houses which promise to give 'assured gifts' to their customers, for eg. In the city of Mumbai and its suburbs various builders had floated advertisements stating that the first x numbers of buyers of flats in their residential construction projects would be give a car/100gms. Gold coins, etc. Similarly malls in Mumbai also offer assured gifts on purchase above certain amounts by their customers. Hence in the present context the word 'gift' has an enlarged scope according to us and has its own colour. In all such cases, as in the present case, the statement that goods, in this case gold coins, will be given to customers who satisfy certain conditions is nothing but assurance of giving away gifts on those conditions being achieved by the customers. Under the GST laws the intention for non-granting/denial of setoff is envisaged in situations where there is no tax on output supply. In cases where the goods are procured with levy of input tax and are supplied without tax being paid on such output supplies, the scheme of the GST Act provides no input tax credit, except export.

Schedule I to the CGST Act, 2017 deals with activities to be treated as supply even if made without consideration. As per Entry Number 2 to Schedule I (2), *Supply of goods or services or both*

between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

The above provisions and Section 17 (5) (h) stipulate that any goods disposed off, by way of gift are not eligible for ITC and that even if supply is in course or furtherance of business between related or distinct persons, it shall be considered as supply except to the extent of fifty thousand rupees in a financial year, when given by an employer to its employee.

Further under Section 17(5), no ITC on any goods can be availed, if they are given as gifts, whether or not in course of furtherance of business. As a corollary if it is considered that gifts have some commercial consideration, then GST shall be paid at the time of giving away of disposal of the same and in such cases only ITC will be available. A "gift" is normally seen as an enticement to customers as in the subject case which would bear heavily on the customers in making purchase of particular quantities and above or in making payments of certain values and above. This act on behalf of the applicant if it is not excluded from the scope of being a supply, then the provisions of the Valuation Rules come into play. Thus in such cases it can safely be assumed that the purchase value and output supply value of the 'gift' shall be the same and therefore the ITC would be the same as the output GST payable. In other words if the giver of the gift does not pay output tax on the same then the compensation to the department would be the foregoing of the ITC on such gifts.

In the instant case it is seen that the applicant has assigned a value to the gold coins to be given as gifts and the value is Rs. 3,200/- per gm. They have not explained as to how they have arrived at the value because value of gold changes everyday. Secondly the Scheme announced by them states that "customers who lifted the products as per the scheme and made payments as per the scheme are invited for the meeting."

We now deal with one of the contention of the applicant that they have a contractual arrangement with the customer wherein if the distributor purchases certain amount of company's product or makes payment in a prescribed manner, then he shall be entitled to a gold coin of specific weight. This can be inferred as if the distributor of the applicant is providing services of increased sale for which consideration is in the form of a gold coin. As per Section 7 of the CGST Act, disposal, or the case may be, barter, made or agreed to be made for a consideration in the course or furtherance of business is supply liable to tax. We find in the present application, the applicant has not shown proof of payment of output tax. The only conclusion that can be drawn in the present case is that the distribution of gold coins by the applicant is not but gifts and hence the transaction is covered by the provisions of Section 17(5) of the Act.



To sum up ITC on "gifts" will not be available when no GST is being paid on their disposal. Just because the applicant submits that they have satisfied Section 16 (1) of the CGST Act 2017 does not mean that they are entitled to credit since Section 17(5) starts with "Notwithstanding anything contained in sub-section (1) of Section 16.....". The implication is that in the subject case even if it seems, as per the applicant, that Section 16 (1) is applicable in their case and allows them credit, Section 17(5) shall block such credits.

In view of all above deliberations, the questions can be answered thus -

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 72/2018-19/B- 165 Mumbai, dt. 20.12.2018

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

Question :- The question or issue before Your Honor for determination is whether Input Tax Credit ("ITC") can be claimed by the applicant on procurement of Gold coins which are to be distributed to the customers at the end of scheme period for achieving the stipulated lifting or payment criteria?

Answer :- In view of the discussions made above the applicant cannot claim ITC on procurement of Gold coins which are to be distributed to the customers

Question :-The question or issue before Your Honor is not restricted to the said scheme only. The applicant notifies schemes with similar conditions periodically. So whether the ITC can be claimed in all such similar schemes.

Answered in the negative in view of answer to Q. No. 1 above.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax, Churchgate Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.

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MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.