

**OFFICE OF THE GUJARAT AUTHORITY FOR ADVANCE RULING
COMMISSIONERATE OF GOODS AND SERVICES TAX,
GUJARAT STATE.
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



RULING ORDER NO. GUJ/GAAR/R/14/2019
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/19)

Date: 23.08.2019

Name and address of the applicant	:	M/s. Moksh Agarbatti Co. No. D-9, Harikrishna Estate, Narol, Sarkhej Bypass, Ahmedabad – 382 405
GSTIN of the applicant	:	24AADFM0323R1ZA
Date of application	:	9.3.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) admissibility of input tax credit of tax paid or deemed to have been paid; (g) 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.
Date of Personal Hearing	:	14.06.2018
Present for the applicant	:	C.A. Rubbal Bhanderi

2. The applicant has submitted following Questions for which advance ruling is required:
- The tax payer offers one unit of Dhoop with a pack of Agarbatti (consisting of 10 pieces of Agarbatti). Can the tax payer claim credit of taxes paid on
 - Inputs used for manufacture of Dhoop?
 - Purchase of dhoop from a third party vendor?
 - As part of the Sales Promotion campaign, the tax payer offers their distributors target based monetary and non-monetary incentives. Can they avail credit on the non-monetary incentives like say Pressure Cooker on purchase of 1,00,000 Agarbatti Packets? Can this qualify as supply of goods to the distributor?
 - The tax payer offers one unit of Agarbatti free on purchase of 1 Carton Box full of Agarbatti. Can credit of the Agarbatti given free of cost be availed as credit by the tax payer?
 - The tax payer has purchased motor vehicle for transport of Director and Employees. Can credit of insurance and maintenance of these motor vehicles be availed as credit?

2.1 Statement of relevant facts, submitted by the applicant, having a bearing on the questions raised:

- i) With respect to Question 1 to 3, the applicant submits that no product is given free of cost. The prices of these products are already factored in the final price charged from the distributor. The Agarbatti Market is price sensitive and brand recall value is very less. The applicant offers freebies and gifts to distributors to ensure that the distributor offers the applicant product to end customer and thereby increase the sales. Thus, this is only a marketing gimmick to ensure that distributors are encouraged to sell the products of applicant in preference to other company products.
- ii) Another typical problem faced in Agarbatti Market is the fact that value discounts are not passed on to the customer. To ensure that these are passed on to the end customer, we are forced to issue discounts in the form of offering Dhoop with Agarbatti instead of reducing the price of the Agarbatti.

2.2 **Statement containing the applicant’s interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant’s view point and submissions on issues on which the advance ruling is sought):**

- i) Section 17(5)(h) of the CGST Act, 2017 restricts credit on goods disposed of by way of gift or free samples. In this regard, the applicant wishes to submit the following:

Credit on Dhoop offered free with Agarbatti Packets	Gifts are voluntary in nature and are not linked to any purchase of goods by the recipient. In the instant case, Dhoop is offered only to recipients who purchase the Agarbatti. There is a direct link between Agarbatti purchased and Dhoop offered free to the distributors. Accordingly, credit of the same should be available irrespective of whether these are manufactured or procured from a third party
Target based non-monetary discounts on achieving specific target	<p>Target based non-monetary discounts are issued based on the schemes floated in advance during the year. The distributor pushes the sales of the product based on the incentive he would receive by achieving certain quantity of sales. Instead of offering monetary discounts which do not have a lasting impact, a non-monetary discount in the form of kitchen appliances are given to distributors which have a lasting effect. These are not fresh supplies but obligations arising out of a predetermined commitment</p> <p>In case the company fails to honour the non-monetary discounts which were promised to the distributor, the</p>

	distributor can pull the company to the Court. Hence, this is a contractual obligation and not a gift. Accordingly, these appliances are not getting disposed of as gifts but are being offered as part of the contract and accordingly credit should be allowed on the same
1 Agarbatti Packet Free on purchase of one Carton box of Agarbatti	<p>This is done to encourage purchase of full carton boxes instead of cutting down the size of purchase. Purchase of one carton box also helps in reducing the various cost</p> <ol style="list-style-type: none"> 1. Packing Material is saved - else same quantity will have to be packed in two different containers; 2. Admin Overheads can be avoided - Counting, Re-packing, Re-labeling etc. Further the cost of the free Agarbatti is already factored while determining the price of the entire carton box and hence even in this case, the products are not being offered as gift and accordingly credit should be allowed

- ii) Products given to dealers as non-monetary discounts are not supplies since these are arising out of the prior contractual obligation between the applicant and their distributor where former agrees to offer latter, a discount based on the target achieved by the latter in the form of issuing certain products. There is no supply of these products as these are arising out of prior contracts and such offering of products does not involve any fresh consideration.
- iii) Section 17(5) (a) does not allow credit on Motor Vehicles but does not restrict credit on insurance and car servicing charges. Given that the expenses are used in relation to business, the credit of the same should be available to the applicant. Additionally, credit on life and health insurance is specifically disallowed unless provided for under any obligation under any law for the time being in force. But credit on premium paid on motor vehicles is not expressly disallowed and these are obtained under an obligation in law which does not permit usage of motor vehicles unless insurance is obtained on these vehicles. Accordingly, credit of taxes paid on insurance premium related to motor vehicles should be allowed.

- 3 **The Central Goods and Services Tax, Ahmedabad-South Commissionerate, vide their letter F.no. IV/16-02/MP/2018-19 dated. 20.04.2018**, gave their point wise comments which are as under:

Point 1 :

As per telephonic information given by the tax payer M/s Moksh Agarbatti Co., the manufacturing activity is carried out by them at their Bengaluru unit. Further, they added that their Ahmedabad unit is godown/depo where no manufacturing activity is being carried out. They also informed that the Ahmedabad unit is in existence since last two years and they were registered with VAT department, however they further added that they were not registered with Central Excise or Service Tax Department.

Point 2:

As mentioned earlier, the tax payer was not registered with Central Excise or Service tax department, as per records of this office, no such issue appears pending or decided in any proceedings in the case of the applicant.

Point 3:

The credit shall not be available to the applicant (M/s Moksha Agarbatti) in case of question 1 to 3 (mentioned at Sr. no. 14 of the application of the applicant) as per Section 17(5)(h) of the Central Goods and Service Tax Act, 2017.

Similarly, the credit shall not be available in case of question 4(mentioned at Sr. no. 14 of the application of the applicant) as per Section 17(5) (a) of the Central Goods & Service Tax Act, 2017.

4. We have gone through the submission of the Applicant and also the comments given by the jurisdictional Commissionerate in the matter.

- 4.1 Section 17(5)(h) of the Central Goods and Service Tax Act, 2017 is reproduced below :

“Apportionment of credit and blocked credits. — (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

- 5) *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 the following, namely :—*

[(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :—

(A) -----

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

(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.”

From the above, it's clear that the credit shall not be available to the applicant (M/s Moksha Agarbatti) in case of question 1 to 3 (mentioned at Sr. no. 14 of the application of the applicant and as reproduced at para 2 (i), (ii) and (iii) above.) as per Section 17(5)(h) of the Central Goods and Service Tax Act, 2017.

4.2 Section 17(5)(a) of the Central Goods and Service Tax Act, 2017 is reproduced below :

(5) 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 the following, namely :—

[(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used —

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

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) :

Provided that the input tax credit in respect of such services shall be available —

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged —

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

From the above, it is clear that the credit shall not be available in case of question 4 (mentioned at Sr. no. 14 of the application of the applicant and as reproduced at para 2 (iv) above.) as per Section 17(5)(a) of the Central Goods & Service Tax Act, 2017.

5 In view of the foregoing, we rule as under –

RULING

Question 1: The tax payer offers one unit of Dhoop with a pack of Agarbatti (consisting of 10 pieces of Agarbatti). Can the tax payer claim credit of taxes paid on
a) inputs used for manufacture of Dhoop?
b) Purchase of dhoop from a third party vendor?

Answer: Answered in negative.

Question2: As part of the Sales Promotion campaign, the tax payer offers their distributors target based monetary and non-monetary incentives. Can they avail credit on the non-monetary incentives like say Pressure Cooker on purchase of 100,000 Agarbatti Packets? Can this qualify as supply of goods to the distributor?

Answer: Answered in negative.

Question 3: The tax payer offers one unit of Agarbatti free on purchase of 1 Carton Box full of Agarbatti. Can credit of the Agarbatti given free of cost be availed as credit by the tax payer?

Answer: Answered in negative.

Question 4: The tax payer has purchased motor vehicle for transport of Director and Employees. Can credit of insurance and maintenance of these motor vehicles be availed as credit?

Answer: Answered in negative.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place: Ahmedabad
Date: 23.08.2019