

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)**

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR/05/2021

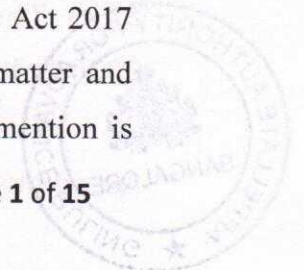
DATE:16-04-2021

Sl. No	Name and address of the appellant	M/s Page Industries Ltd, Cessna Business Park, Tower-1, 3 rd Floor, Umiya Business Bay, Kadubeesanahalli Village, VarthurHobli, Sarjapur Marathahalli Outer Ring Road, Bangalore 560103
1	GSTIN or User ID	29AABCP2630D1ZS
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 54/2020 Dated: 15thDecember 2020
3	Date of filing appeal	19-01-2021
4	Represented by	Mr K.S. Kamalakara, Cost Accountant
5	Jurisdictional Authority- Centre	The Principal Commissioner of Central Tax, Bangalore East Commissionerate.
6	Jurisdictional Authority- State	LGSTO 015, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Challan CIN No SBIN21012900237874 dated 18-01-2021 for Rs 10,000/- and CIN No 21012900295058 dated 19-01-2012 for Rs 10,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is



particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Page Industries Ltd, Cessna Business Park, Tower-1, 3rd Floor, Umiya Business Bay, Kadubeesanahalli Village, VarthurHobli, Sarjapur Marathahalli Outer Ring Road, Bangalore 560103(herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 54/2020 dated: 15th December 2020.

Brief Facts of the case:

3. The Appellant is engaged in the manufacture, distribution and marketing of Knitted and Woven Garments under the brand name “JOCKEY” and swimwear and swimming equipment under the brand name “SPEEDO”. The Appellant also gets the garments manufactured from job workers. The Appellant market/sell their products through their franchisees and distributors/dealers. To promote their brands and to market their products, the Appellant is availing advertisement agency services such as ads in the print media, electronic media, outdoor advertising, etc and also procuring the promotional items and marketing material such as display boards, uniforms to staff, posters, gifts and hoardings, etc to use in displaying their products at the point of purchase i.e Exclusive Brand Operator’s showrooms and retail show rooms. The Appellant is paying GST on the procurement of the advertisement services and promotional products/marketing materials.

4. In this regard, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

“Whether in the facts and circumstances of the case the Promotional Products/Materials & Marketing items used by the Appellant in promoting their brand & marketing their products can be considered as “inputs” as defined in Section 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as input tax credit in terms of Section 16 of the CGST Act, 2017 or not?”

The AAR vide its order KAR ADRG No 54/2020 dated 15th December 2020 held as under:



"1. The ITC on GST paid on the procurement of the "distributable" products which are distributed to the distributors, franchisees is allowed as the said distribution amount to supply to the related parties which is exigible to GST. Further the said distribution to the retailers for their use cannot be claimed as gifts to the retailers or to their customers free of cost and hence ITC of GST paid on such procurement is not allowed as per Section 17(5) of the GST Acts.

2. The GST paid on the procurement of "non-distributable" products qualify as capital goods and not as "inputs" and the applicant is eligible to claim input tax credit on their procurement, but in case if they are disposed by writing off or destruction or lost, then the same needs to be reversed under Section 16 of the CGST Act read with Rule 43 of the CGST Rules."

6. Aggrieved by the ruling given by the AAR, the Appellant has filed this appeal on the following grounds.

6.1. The Appellant submitted that the Authority misconstrued facts and traversed beyond the ruling sought for by treating the Appellant and their franchisees i.e Exclusive Brand Operators as "related persons" and thereby ruled that the promotional / marketing items transferred by the Appellant to their Exclusive Brand Operators for use in promoting their brand products amounts to "supply" in terms of Para 2 of Schedule I to the CGST Act; that the Authority has presumed that the "non-distributable goods" are not transferred out of the accounts of the Appellant and same remains as asset of the Company; that the Authority has also presumed that they have capitalized these goods and use these goods for promotion till usable and claim depreciation, which is factually incorrect. They submitted that all promotional items are accounted as sales Promotion in their books of accounts and expenses incurred towards sales promotions is necessarily input services and used for furtherance of business.

6.2. They submitted that to display their products at the point of purchase and to effectively make known their range of products to the ultimate customers, the Appellant is procuring display items such as stands, hangers, cupboards, ladders, etc and sending these to the Exclusive Brand Operators and Retailers to display their branded products; that to promote their products at retail level and to help the customers in identifying the exclusive Brand operator and retailer of the Appellant's brand in the market, the Appellant is getting display boards manufactured with their brand logo and name of the exclusive brand operators



and retailers; that to help customers in recognizing sales girls and boys of their brands at the point of purchase i.e showrooms of their exclusive brand operator and retailers and at the exhibition centers, the Appellant is providing the uniforms to the sales girls and boys; that to attract the customers at the point of purchases, the Appellant gets posters printed in respect of newly introduced products and provides the same to the exclusive brand operators and retailers; that to enhance the goodwill of their brands and maintain customer loyalty, the Appellant procures pens, diaries, table calendars, etc with affixation of their brand and distributes the same as gifts to their exclusive brand operators and retailers.

6.3. The Appellant submitted that they are procuring all of the above on payment of applicable GST and the same are distributed under challans to their Exclusive Brand Operators and Retailers to use in brand promotion; that since brand promotion is in furtherance of their business, the Appellant is treating the said promotional items as 'input' and availing GST paid on the same as input tax credit in terms of Section 16 of the CGST Act. They submitted that in terms of Section 16 of the said Act, the substantial condition is that the goods or service should be used in the course of or in furtherance of business; that the phrase "used in the course or furtherance of business" has a very vast meaning; that it is not necessarily only goods or services or both procured in relation to their "output" but also includes any goods or services used in the course or furtherance of business which will qualify as "inputs" or "input service". In this regard, they relied on the decision of the Hon'ble Supreme Court in the case of *Mazagon Dock Ltd vs CIT and Excess Profit reported in 1958 (5) TMI 2- SUPREME COURT*, the Bombay High Court decisions in the case of *Coco Cola India Pvt Ltd vs CCE, Pune III reported in 2009 (15) STR 657 (Bom)* and *CCE, Nagpur vs Ultratech Cement Ltd reported in 2010 (260) ELT 369 (Bom)*. They submitted that the principle laid down in the above judgments equally applies to Section 16 of the CGST Act and therefore, the promotional / marketing items sent to their franchisees and to their distributors/dealers' showroom to use in promoting their brands and marketing their products, will form integral part of their business and same amounts to use of such goods in business or furtherance of the Appellant's business; that therefore, the same qualifies as "input" in terms of Section 2(59) of CGST Act and GST paid on the same is entitled to be availed as input tax credit in terms of Section 16 of the said Act.

6.4. They also submitted that the promotional/marketing items used by them at point of purchase i.e their showrooms or by their distributor/dealer's showrooms is to promote their brands and make known the range of products manufactured by them; that they are not



simply distributing the said promotional/marketing items at free of cost to their distributors/dealers; that they are distributing the same with the obligation to promote their brands and market their products and hence the same cannot be construed as “gift” covered under Section 17(5)(h) of the CGST Act. They submitted that they are sending such promotional / marketing items without transferring the title over the same to their franchisees and to their distributors/dealers not for their personal use but with obligation to promote their brand and market their products. They submitted that there is a difference between disposing of goods by way of gift and using those items in promotion and marketing activity; that in “gift” there will not be any further obligation on the part of the person who accepts the gift but in the case of promotional / marketing items sent by the Appellant, there is an obligation on the part of the franchisees or distributors/dealers to use the same in promoting the brand.

6.5. The Appellant submitted that they are sending the promotional/marketing items under a delivery challan to their point of purchase i.e their franchisee’s showrooms and their distributor/dealer’s showrooms for use in promoting their brand; that this is also one kind of advertising of their brand and products; once advertising service used in promoting the brand and marketing the goods qualifies as “input service” in terms of Section 2(60) of CGST Act, the goods used in promoting the brand and marketing the products also qualify as “input” in terms of section 2(59) of the said Act and consequently the Appellant is entitled to avail the GST paid on the said items as input tax credit.

6.6. They further submitted that on procurement of the promotional/marketing items and transfer of the same to their franchisees and retailers, they have accounted the same in their books of accounts as “revenue expenditure” and the same will not remain as “asset” in their books of accounts and they are not claiming any depreciation on the same; that the Authority has presumed that the promotional / marketing items remain as “assets” in their books of accounts and treating the same as capital goods are claiming depreciation, which is factually incorrect. They submitted that the observation of the Authority that by retaining the ownership of these materials the same will not become direct cost of the products sold is totally incorrect; that although they have transferred the said materials by retaining the ownership of the same, it becomes the cost of the final output supplied by them since they have been used in promoting their brands and products; that they are treating the cost as revenue expenditure in their accounts and hence the question of treating the same as capital goods and reversal of ITC does not arise.



6.7. They also submitted that the Authority has traversed beyond the ruling sought for and by misconstruing the facts has held that the Appellant and their franchisees i.e Exclusive Brand Operators are “related persons” and thereby held that the promotional/marketing items transferred by the Appellant to the Exclusive Brand Operators for use in promoting their brand amounts to “supply” in terms of clause 2 of Schedule 1 to the CGST Act, which is not correct. They submitted that the Appellant and their franchisees are different entities and independently carrying out their business and they are not associated; that the finding by the Authority is without any basis and not supported by any statutory provision. In view of the above, the Appellant prayed that the ruling given by the Authority may be set aside and they be permitted to avail input tax credit on the promotional/marketing items used in promoting their brands by treating the same as “inputs”.

PERSONAL HEARING

7. The appellant was granted a virtual hearing on 8th April 2021. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. K.S Kamalakara, Cost Accountant and Authorised representative.

7.1. The authorised representative explained the activity undertaken by the Appellant with regard to brand promotion. He submitted that, in order to display their products at the point of purchase and to effectively make known their range of products to the ultimate customers, the Appellant is procuring display items such as display stands/boards, posters, outdoor hoardings, uniforms for staff, hangers, cupboards, ladders, etc and these are sent to the Exclusive Brand Operators and Retailers to display their branded products. In addition, the Appellant is also procuring items such as pens, diaries, table calendars, etc embossed with their brand name and the same are distributed to their exclusive brand operators and retailers. The GST paid on the procurement of display / promotional items as well as the distributable items is being availed by them as input tax credit.

7.2. He submitted that while the lower Authority had allowed the input tax credit on the display promotional items, the Authority had erred in treating them as capital goods. He submitted that the said items are not capitalised in their books of accounts but are always treated as revenue expenditure. On a specific query by the Member as to whether the display /



promotional items are taken back from the franchisees and retailers, he submitted that the Appellant is not taking back these items and they continue to remain in the premises of the franchisee and retailer as long as they are in business; that in the event of a new showroom opening, some of these display items will be shifted from one showroom to another. On being asked about the contractual terms with their franchisees and retailers regarding the transfer of such display/promotional items, he agreed to submit copies of the contract along with submissions in this regard on 9th April 2021.

7.3. As regards the distributable items which carry the logo of the Appellant, he submitted that items such as pens, diaries, calendars and carry bags are given to the franchisees and retailers free of cost for the purpose of distributing to the customers who purchase their products; that this is also a form of brand promotion and cannot be termed as “free gift”. He submitted that the GST paid on the procurement of such distributable items will not be hit by the provisions of Section 17(5)(h) as wrongly held by the lower Authority. He relied on the ruling given by the Maharashtra Appellate Authority for Advance Ruling in the case of Sanofi India Ltd reported in 2019 (10) TMI 1384 wherein the goods embossed with the brand name and distributed to the distributors with the sole intent of promoting the growth of their product was held as not being hit by the provisions of Section 17(5)(h) of the CGST Act. At this juncture, it was informed by the Member that in the case of Sanofi India Ltd, the Appellate Authorities in Maharashtra have invoked the provisions of Section 101(3) of the CGST Act whereby it is deemed that no advance ruling can be issued in respect of the question under appeal as there was a difference of opinion between the Members of that Authority; that accordingly, the case relied upon will not have any persuasive value. This was accepted by the authorised representative of the Appellant

7.4. The authorised representative also submitted that the franchisees and the retailers are independent entities and only have representational right to promote their brand products; that the franchisees and retailers cannot be termed as ‘related persons’ as wrongly held by the lower Authority. In view of the above submissions, it was prayed that all the items i.e both the display / promotional items and the distributable items engraved with their logo, be treated as “input” and allowed as input tax credit.

8. The Appellant also furnished additional written submission at the time of personal hearing as well as on 12-04-2021 wherein they submitted that the Advance Ruling Authority traversed beyond the question on which ruling was sought for which is in violation of Section

98(4) of the CGST Act and not sustainable in law. They also submitted that they have not capitalised the materials like display boards, posters, outdoor hoardings, etc sent to their franchisees and distributors in their books of accounts as wrongly assumed by the lower Authority, but rather, have accounted for the same as revenue expenditure; that as per accounting standards, the expenses incurred in respect of promotion of brands have been accounted as revenue expenditure. They also submitted copy of the Distributor agreement dated 14-12-2019 with Ms Everland Trading, Kerala and copy of the EBO (Exclusive Brand Outlet) agreement dated 12-12-2017 with Highland Enterprises, Kerala to substantiate the above submissions. They also submitted that the franchisees and retailers are independent entities carrying on their business and hold only a representational right to promote and market the brands of the Appellant. The lower Authority has wrongly considered these franchisees and retailers as 'related person' which is not correct. They further submitted that it is a contractual obligation on the part of the Appellant to equip the distributors and EBOs operation with training, marketing and technical assistance with the promotional products to enhance their sales and to provide necessary promotional materials; that on termination of the EBO agreement, the EBO operator shall immediately cease to use the promotional materials; that since the Appellant has at its cost distributed these promotional materials, it belongs to the Appellant and the EBOs and distributors have to return the promotional materials on termination of the agreements subject to wear and tear.

DISCUSSIONS AND FINDINGS

9. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal, the additional submissions as well as the submissions made at the time of personal hearing.

10. Briefly stated the facts are the Appellant is a manufacturer of knitted and woven garments under the brand name "JOCKEY" and swim wear and swimming equipment under the brand name "SPEEDO". The goods manufactured by the Appellant are sold through their own outlets and also through their distributors and retail dealers. For the purpose of promoting their brand and products, the Appellant procures various items such as gondola racks, wall shelves and panels, mannequins, storage units, hangers, signages, posters, display stands, etc which are used in the showrooms for display of their products as well as



for advertising their products. Further, the Appellant also procures certain give away items such as carry bags, calendars, dairies, leather bags, pens with their brand name embossed / engraved which are distributed to the showrooms and retailers for giving away to customers who purchase their products. In addition, the Appellant also procures advertising services for advertising their products in the print media, electronic media and outdoor advertising. All the above items and services are procured on payment of GST and the Appellant avails input tax credit of the tax paid on the same.

11. The Appellant had applied for a ruling on whether the promotional goods purchased for use in their showrooms for displaying their products and the items distributed to their showrooms, distributors and retailers for giving away to customers, can be treated as 'inputs' on which input tax credit can be availed. The lower Authority held that the items which are sent to the showrooms for use in the display of the Appellant's products without transferring the ownership, are to be treated as capital goods and not inputs; that the GST paid on the procurement of such items is eligible for input tax credit. However, when these items reach the end of their period of usage, they are either disposed of or written off by the Appellant and hence the input tax credit which was claimed is required to be reversed as per Rule 43 of the CGST Rules, 2017. As regards, the items distributed to their Exclusive Brand Outlet/franchisee showrooms, distributors and retailers as give away items to the customers, the lower Authority has held that the items distributed to the distributors and franchisees is eligible for input tax credit as input since the supply is made to related parties whereas the give away items distributed to retailers is to be considered as gifts which is not eligible for input tax credit in terms of Section 17(5) of the CGST Act.

12. The Appellant is before us in appeal on the following grounds:

a) the items such as display boards, posters, etc sent to the franchisees and distributors have not been capitalised in their books of accounts but have been treated as revenue expenditure. Hence the ruling treating such items as capital goods and not inputs is not correct.

b) the items such as carry bags, pens, calendars, etc which are distributed to their franchisees and distributors for giving to the customers, cannot be considered as gifts but to be treated as a form of promotional/advertising activity which is eligible for input tax credit.



c) the franchisees and distributors are independent entities and are not related persons as wrongly held by the lower Authority; that the franchisees and distributors have only representational rights and have the obligation to promote and market the brands of the Appellant in the specified territory but they are not related in any other way to the business of the Appellant.

13. On going through the records, we find that there are three ways by which the Appellant carries out the promotion and marketing of their products viz.,

a) They procure items such as gondola racks, wall shelves and panels, POP items such as mannequins and half busts, storage units, hangers, signages, posters, display stands, etc which are used in their Exclusive Brand Outlet (EBO)/franchisee showrooms and by their distributors and retailers for display and advertising of their products. These items are purchased by the Appellant from various suppliers on payment of GST. The items are sent to the point of purchase i.e the showrooms of the EBO/franchisees, distributors and retailers under cover of a delivery challan. In certain cases, these items are sent directly from the supplier's premises to the point of purchase on a bill to ship to basis. The promotional items are supplied by the Appellant free of cost to the franchisee / distributor / retailer as per the terms of the agreement and the title of the said items remains with the Appellant and the same is not transferred to the franchisee or distributor or retailer. These promotional items continue to remain with the franchisee / distributor / retailer until the termination of the agreement between the Appellant and the franchisee / distributor / retailer. The Appellant is availing input tax credit on the procurement of these promotional items by treating them as "inputs".

b) They procure items such as carry bags, calendars, dairies, pens, etc with their brand name embossed/engraved from various suppliers on payment of GST and distribute these items free of cost to the showrooms of their franchisees, distributors and retailers for the purpose of giving away to customers who buy their products. In this case also, the title of the goods remains with the Appellant and the Appellant is availing input tax credit on these give away items by treating them as "inputs".

c) They procure the services of advertising agencies for ads in the print media, electronic media and outdoor advertising. These services are procured on payment of GST and credit is availed by the Appellant as an input service.

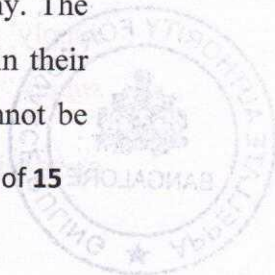
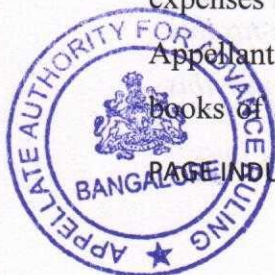


14. The point for determination by us is only with regard to the promotional items mentioned at (a) and (b) above and whether the same can be considered as “inputs” and eligible for input tax credit by the Appellant in terms of Section 16 of the CGST Act. The term “input” is defined in Section 2(59) of the CGST Act as follows:

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.

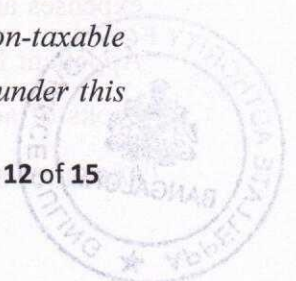
With regard to the promotional items such as gondola racks, wall shelves and panels, POP items such as mannequins and half busts, storage units, hangers, signages, posters, display stands, etc, we find from the copies of the agreements furnished by the Appellant that there is a contractual obligation on the part of the Appellant to provide their EBO/franchisees and distributors promotional materials. The purpose of providing the EBO/franchisees and distributors with these promotional items is to enhance the sales of their products. Thus, we have no hesitation in concluding that these promotional items (referred to by the lower Authority as ‘non-distributable goods’) are indeed used in the course or furtherance of the Appellant’s business.

15. We find that the lower Authority has concluded that these promotional items (referred to by the Authority as non-distributable goods) are in the nature of capital goods since the ownership of these goods is retained with the Appellant. It is evident from the agreements that the ownership of the promotional items remains with the Appellant at all times. It is seen from the said agreements that the Appellant Company has undertaken to provide the promotional materials to the EBOs and distributors and the same will continue to be used by the EBO and distributors as long as the agreement is in force. It is also expressly stated in the agreements that on termination of the agreements, it is the responsibility of the EBOs and distributors to return the promotional materials to the Appellant. This fact was reiterated by the authorised representative during the course of the personal hearing when a specific query in this regard was posed by the Member. Therefore, it is evident that the title of the promotional items remains with the Appellant and is not transferred to the EBO or the distributor. In normal accounting standards, the cost incurred for promotional activities and procurement of promotional items is an expense for the Company. Such promotional expenses are incurred with the objective of generating more revenue for the Company. The Appellant has also urged before us that these promotional items are not capitalised in their books of accounts but are always treated as revenue expenditure and hence they cannot be



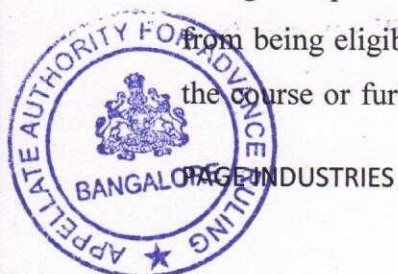
considered as 'capital goods'. This is in tune with the normal accounting practices. We therefore, disagree with the finding of the lower Authority and hold that the promotional items purchased by the Appellant and provided to the EBOs/franchisees, distributors and retailers are not capital goods but 'inputs' which are used in the course or furtherance of business.

16. As regards the eligibility of input tax credit on these promotional items, the same is governed by the provisions of Chapter V (Sections 16 to 19) of the CGST Act. Section 16 states that a registered person shall be entitled to take input tax credit of the 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. Section 17 restricts the entitlement of input tax credit when the goods and services or both are used for non-business purposes or exempt/non-taxable supplies. Further, notwithstanding the entitlement conferred by Section 16, certain goods and services and certain forms of supply, as mentioned in Section 17(5) of the CGST Act, are expressly denied input tax credit. In the background of the above provisions of law, let us examine the Appellant's eligibility to input tax credit on the promotional items. We observe that the promotional materials are provided to the franchisees and distributors free of charge. As per Section 7 of the CGST Act, a transaction is termed as a supply only when it is made for a consideration. However, the transactions specified in Schedule I of the CGST Act can be treated as a supply even if they are made without any consideration. One such transaction mentioned in clause (b) of Schedule I is a supply of goods or services or both made between related parties or distinct persons. In this case, we find that the franchisees and distributors are independent entities and are not related to the Appellant in any of the ways mentioned in the Explanation to Section 15 of the CGST Act. Another transaction made without consideration which amounts to a supply is mentioned in clause (a) of Schedule I and it applies to the *permanent transfer and disposal of business assets where input tax credit has been availed on such assets*. We have already held that these promotional items are not assets of the Appellant and hence this clause will also be applicable to the Appellant's case. Therefore, the provision of promotional materials free of charge by the Appellant to the franchisees and distributors is neither covered within the scope of a taxable supply as defined in Section 7 of the CGST Act nor is it a supply covered under the ambit of Schedule I of the said Act. The activity of providing the promotional items can be termed as an 'non-taxable supply' as defined in Section 2(78) of the CGST Act which reads as follows: "*non-taxable supply*" means a supply of goods or services or both which is not leviable to tax under this



Act or under the Integrated Goods and Services Tax Act. In terms of Section 17(2) of the CGST Act, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. In other words, Section 17(2) provides that input tax credit shall be allowed only when the goods and services or both are used for business purposes or for making a taxable supply (including zero-rated supply). When the goods or services or both are used towards making an exempt supply, then input tax credit is not allowed. As per Section 2(47) of the CGST Act, the term 'exempt supply' also includes non-taxable supply. In view of the above provisions, we hold that the GST paid on the procurement of promotional items supplied to the EBOs/franchisees and distributors free of charge will not be eligible for input tax credit since the said supply is a non-taxable supply.

17. We also observe that in the case of the promotional items such as carry bags, calendars, diaries, pens, etc embossed/engraved with the brand name and which are distributed to the EBOs/distributors/retailers for the purpose of giving away to the customers (referred to by the lower Authority as 'distributable goods'), there is no contractual obligation on the part of the Appellant to provide these promotional items for distribution. It is voluntarily done by the Appellant with the sole intention of promoting their brand and increasing the sales of their products. These distributable/give away items are supplied at will, free of cost to the EBOs/franchisees, distributors and retailers. While this supply is also a non-taxable supply and ineligible for input tax credit, there is an additional disentitlement in terms of Section 17(5)(h) which provides that goods which are disposed of by way of gift are not eligible for input tax credit. It is important to understand the meaning of the term "gift". The GST law has not specifically defined the term "gift". Hence one must turn to the definition provided under Section 2(xii) of the Gift Tax Act which defines gift as 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. Thus, it can be said that in this case, these give away promotional items which are distributed at the sole discretion of the Appellant without any contractual obligation or consideration, acquires the character of gifts. The goods procured on payment of GST which are disposed of by way of gifts are barred from being eligible for input tax credit in terms of Section 17(5)(h), even if they are used in the course or furtherance of business. Therefore, we hold that input tax credit is not eligible



on the promotional items distributed as give away items on the grounds that the same is blocked by virtue of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act.

18. The Appellant has placed reliance on the decision dated 22nd October 2019 given by the Maharashtra Appellate Authority for Advance Ruling in the case of Sanofi India Ltd to substantiate their claim that the promotional items are not gifts and hence will not be hit by the provisions of Section 17(5)(h) of the CGST Act. We have gone through the said decision and observe that the Members of the Maharashtra Appellate Authority differed in their decision on the points in appeal and hence, in terms of Section 101(3) of the CGST Act, it was deemed that no advance ruling can be issued in respect of the question under appeal. The Appellant in this case has placed reliance only on the opinion expressed of the Member (CGST) in Sanofi India Ltd case. In view of the fact that there is no ruling in the appeal filed by M/s Sanofi India Ltd, the case does not have any persuasive value.

19. In view of the above discussion, we pass the following order

ORDER

We set aside the ruling No.KAR ADRG 54/2020 dated 15/12/2020 passed by the Advance Ruling Authority and answer the question of the Appellant as follows:

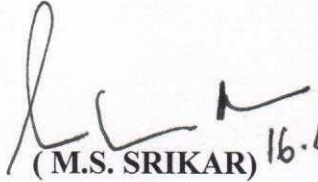
The Promotional Products/Materials & Marketing items used by the Appellant in promoting their brand & marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act, 2017. However, the GST paid on the same cannot be availed as input tax credit in view of the provisions of Section 17(2) and Section 17(5)(h) of the CGST Act, 2017.



The appeal filed by M/s Page Industries Ltd, Cessna Business Park, Tower-1, 3rd Floor, Umiya Business Bay, Kadubeesanahalli Village, VarthurHobli, Sarjapur Marathahalli Outer Ring Road, Bangalore 560103, is disposed of on the above terms.


(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

To, **डी.पी. नागेन्द्र कुमार,**
D.P. Nagendra Kumar,
The Appellant **प्रधान मुख्य अधिकारी/Principal Chief Commissioner**


(M.S. SRIKAR) 16.4.2021
Member
Karnataka Appellate Authority
for Advance Ruling
Commissioner of Commercial Taxes
Karnataka, Bangalore.

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Principal Commissioner of Central Tax, Bangalore East Commissionerate
4. The Assistant Commissioner, LGSTO-15, Bangalore
5. Office folder