

GIB/KA/PAGE INDUSTRIES LIMITED/15.12.2020/AAR-469

Advance Ruling Category : Input Tax Credit

State : Karnataka

Order No.: GIB/KA/PAGE INDUSTRIES LIMITED/15.12.2020/AAR-469

Name of Entry :
PAGE INDUSTRIES LIMITED

Date : 15-12-2020

Breif Issue :

FACTS OF THE CASE:

In this case the applicant M/s Page Industries Limited is engaged in manufacture, distribution and marketing of knitted and woven garments under the brand name of “Jockey”, swim-wears and swimming equipment’s under the brand name of “SPEEDO”.

Further, to promote their brands and to market their products, the Applicant is availing the services of advertisement agencies such as ads in the print media, electronic media, outdoor advertising etc. The Applicant is also procuring the promotional products and marketing materials for use in displaying their products at the point of purchase i.e. their showrooms & showrooms of their distributors/ dealers. On availment of such advertisement services & procurement Promotional Products / marketing materials, the Applicant is paying applicable GST thereon.

Two types of materials are being distributed to franchisees (exclusive show-rooms)/distributors/ retailers(brand stores):

Those which are delivered to the distributors, franchisees and retailers but the ownership lies with the Applicant, but the same are used in their premises (“**non distributable goods**”)

Those which are delivered free of cost to the distributors, franchisees and retailers to be distributed to their employees and customers (“**distributable goods**”)

ISSUE OF THE CASE:

Whether in the facts and circumstances of the case, the promotional products /materials and marketing items used by the Applicant in promoting their brand and marketing their products can be considered as “inputs” as defined under Section 2(59) of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) and GST paid on the same can be availed as ITC in terms of Section 16 of the CGST Act?

Decision of Advance Ruling Authority :**DECISION:**

In the instant case, with regard to the first category i.e. (“**non distributable goods**”) the Franchisees of the applicant are associated in the business of one another and hence are related persons. It is an admitted fact that the applicant disposes the distributable goods by way of gifts and free supplies to promote business and hence are to be treated as supplies in terms of para 2 of Schedule I to the CGST Act 2017. Thus the applicant need to discharge applicable GST on such supplies and thereby is entitled to avail input tax credit on the said supply of goods.

The second category i.e. (“**distributable goods**”) is that of all brands stores and they do not fall under the related persons to the applicant. Further the above Circular also addresses applicant's contention that items supplied for promotion of the brand is as per contractual obligation & hence can't be called as gifts. [Circular No.92/ 11/2019- GST dated 07.03.2019](#) makes it abundantly clear that these items would be called gifts. Hence in this case, since the persons to whom the distributable goods are given are not related parties and are distinct persons and are not employees of the applicant, the transaction is not coming under the scope of supply and hence the applicant is not eligible to claim input tax credit on the same.

So 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.

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, 2017 read with Rule 43 of the CGST Rules, 2017.

For further reference check the appellate advance rulling here-order no. [KAR/AAAR/05/2021 dated-16.04.2021](#)