Sanofi India Limited (Appellant)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/10/2019-20, dated 22.10.2019 (appeal No.… Dated **22.10.2019**

Q Questions Before the Authority

- Whether input tax credit is available of the GST paid on expenses incurred towards promotional schemes of 'Shubh Labh Loyalty Program'?
- Whether input tax credit is available of the GST paid on expenses incurred towards promotional schemes goods given as brand reminders?

F Facts

Sanofi India Limited sells pharmaceutical goods and services. Under its 'Shubh Labh Trade Loyalty Program', wholesalers earn reward points on purchases of its products, redeemable for items such as a Singapore trip or a Raymond Weil watch, which the Appellant buys and supplies to the wholesaler. Separately, pens, notepads and key chains embossed with the Sanofi brand are given free to distributors and doctors as brand reminders. The Appellant claimed ITC on the GST paid on these procurements.

H Ruling

ITC on GST paid on expenses for Shubh Labh Trade Loyalty Program promotional goods and services supplied to wholesalers	**Answered in positive by CGST Member (Sharma). SGST Member (Jalota) upheld the AAR's negative answer. No ruling issued.**	**Split decision**. Under Section 101(3), deemed that no advance ruling can be issued on this question.
ITC on GST paid on expenses for promotional goods given as brand reminders (pens, notepads, key chains embossed with Sanofi)	**Answered in positive by CGST Member (Sharma). SGST Member (Jalota) held ITC not available as the goods are gifts under Section 17(5)(h). No ruling issued.**	**Split decision**. Under Section 101(3), deemed that no advance ruling can be issued on this question.

The Bench split. The CGST Member (Smt. Sungita Sharma) answered both questions in the positive, allowing ITC. The SGST Member (Shri Rajiv Jalota) upheld the AAR's negative answers, holding the items to be gifts barred by Section 17(5)(h). Because the Members differed, **no advance ruling can be issued** on the questions under appeal, as deemed by Section 101(3) of the CGST Act.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The CGST Member held that the goods and services are inputs used in furtherance of business under Section 2(59) and 2(60), are not supplies that could be exempt under Section 2(47) or non-taxable under Section 2(78), and are not gifts under Section 17(5)(h) because the transfers are not voluntary and carry a commercial motive. The SGST Member held that the free distribution of goods is a gift in the sense of Sonia Bhatia v. State of UP, and that Section 17(5)(h) overrides Section 16(1) by a non-obstante clause. Because the two Members reached opposite conclusions on the key question, the order records that no advance ruling can be issued.

P Provisions Relied On

- Section 16(1) CGST Act 2017 (entitlement to ITC for business use)
- Section 17(5)(h) CGST Act 2017 (blocked credit: goods lost, stolen, destroyed, written off or disposed of by way of gift or free…
- Section 17(2) CGST Act 2017 (apportionment for exempt supplies)
- Section 2(47) and Section 2(78) CGST Act 2017 (exempt supply; non-taxable supply)
- Section 2(59) and Section 2(60) CGST Act 2017 (definitions of input and input services)
- Section 7 CGST Act 2017 (scope of supply, including barter)
- Section 9 CGST Act 2017 (levy on supplies)
- Section 15 CGST Act 2017 (value of supply)
- Schedule I, entry 1 CGST Act 2017 (permanent transfer of business assets; cited by the Appellant)
- Section 101(3) CGST Act 2017 (deemed no advance ruling where Members differ)
- Circular No. 92/11/2019-GST dated 07.03.2019 (cited by the Appellant)
- Circular No. 105/24/2019-GST dated 28.06.2019 (cited by the Appellant; withdrawn)
- Sonia Bhatia v. State of UP [1981 (3) TMI 250 - SC] (definition of gift)

! For the Practitioner

This is a split order, not a ruling. Its main value is as a record of how the two Members analysed promotional goods, reward-scheme supplies and Section 17(5)(h) gifts, which a practitioner can cite in similar disputes. It does not settle the ITC position for Shubh Labh or brand-reminder expenses, because Section 101(3) deems no advance ruling to have been issued. The order should be read in full for both Members' reasoning before relying on any part of it.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah_aaar_ss-rj_10_2019-20_22.10.2019_sil.pdf

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