BIOSTADT INDIA LIMITED

Authority for Advance Ruling — Maharashtra

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

Q Questions Before the Authority

- Whether Input Tax Credit can be claimed by the applicant on procurement of gold coins which are to be distributed to customers at the end of the scheme period for achieving the stipulated lifting or payment criteria (Kharif Gold Scheme 2018).
- Whether ITC can be claimed in all such similar schemes that the applicant notifies periodically with similar conditions.

F Facts

The applicant, a manufacturer and distributor of crop protection chemicals and hybrid seeds, ran the Kharif Gold Scheme 2018 for June to August 2018. Customers who lifted specified quantities of products received a 10 gram gold coin, and customers who made staggered payments received an 8 gram gold coin, with a meeting at scheme end to award the coins. The applicant bought the coins from jewellers, paid GST at 3 percent on them, and sought ITC on that tax.

H Ruling

ITC on gold coins procured for distribution to customers at scheme end	****Not allowed.** The applicant cannot claim ITC on procurement of gold coins distributed to customers.**	The order treats the coins as gifts under Section 17(5)(h), and no output tax was shown to have been paid on their disposal.
ITC on similar schemes notified periodically with similar conditions	****Not allowed.** Answered in the negative in view of the answer to Question 1.**	The answer is tied to the first answer and applies only to schemes with the same structure.

The authority held that the applicant cannot claim ITC on gold coins procured for distribution to customers under the scheme. The coins were treated as gifts disposed of without tax, so the credit is blocked under Section 17(5)(h) despite Section 16(1). Because the answer to the first question is negative, the second question was also answered in the negative.

R Reasoning

The authority accepted that Section 16(1) may be satisfied but held that Section 17(5) starts with a non-obstante clause and overrides it. Under Section 17(5)(h), ITC is not available on goods disposed of by way of gift or free samples. The authority held that the coins were gifts because the scheme was not a contractual obligation: no contract had been produced, only a brochure, and the coins were given on achieving conditions. It relied on the

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

Gift Tax Act definition and on the common-parlance sense of gifts as used in assured-gift promotions, and it found no proof of output tax, so the blocking applied.

P Provisions Relied On

- Section 16(1) CGST Act 2017 (ITC eligibility)
- Section 16(2) CGST Act 2017 (conditions for ITC)
- Section 17(5) CGST Act 2017 (blocked credits, non-obstante clause)
- Section 17(5)(h) CGST Act 2017 (goods disposed of by way of gift or free samples)
- Section 2(59) CGST Act 2017 (definition of input)
- Section 2(62) and 2(63) CGST Act 2017 (input tax and input tax credit)
- Section 7 CGST Act 2017 (supply, including barter or consideration)
- Section 15(3) CGST Act 2017 (discount), referred to as an alternative argument
- Schedule I, entry 2, CGST Act 2017 (supply without consideration)
- Section 2(xii) Gift Tax Act 1958 (definition of gift)

! For the Practitioner

The order is a rejection on gift grounds and bars ITC on gold coins or similar gifts given to customers under sales promotion schemes that are not contractually binding. It does not decide whether a scheme could be restructured as a discount recorded on invoices under Section 15(3), which the authority only mentioned as an alternative argument, nor does it decide valuation of the coins. The order is appealable to the Maharashtra Appellate Authority for Advance Ruling under the note at the end of the order.

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 -> ara_order_72_2018_maharashtra_biostadt.pdf

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