M/s BMW India Pvt. Ltd.

Authority for Advance Ruling — Haryana

ADVANCE RULING NO. HAR/HAAR/R/2018-19/49 (In Application No.: 49/… Dated **10.04.2019**

Q Questions Before the Authority

- (a) Whether certain customized lifestyle goods procured by BMW India, either from a third party local supplier or imported from outside India, for supply of goods during promotion/marketing events organized by the Company will qualify as used in the course or furtherance of business in terms of the CGST Act, 2017.
- (b) Whether the Company is eligible to avail input tax credit for such goods supplied under the marketing events in terms of the CGST Act, 2017.

F Facts

BMW India organizes marketing and sales promotion events across India, such as golf events, Joyfest and XDrive experience test drives, to build brand loyalty and attract potential buyers. At these events attendees receive BMW-branded lifestyle accessories free of cost, including duffle bags, golf balls, T-shirts, caps, diaries, key chains and passport holders, embossed with the BMW logo. The company books the expenditure as sales promotion and marketing expense.

H Ruling

Whether the procured lifestyle goods supplied at marketing events are used in the course or furtherance of business	**Yes, they qualify as used in the course or furtherance of business**	Ruling 7.1. The authority accepted that promotion and marketing advance business.
Whether the company can avail input tax credit on such goods supplied under marketing events	**No, input tax credit is not available**	Ruling 7.2. Barred under section 17(5)(h) because the items are gifts, notwithstanding the company's view that the FoC supplies are made for consideration.

The authority held that the goods procured and supplied during promotion and marketing events qualify as being used in the course or furtherance of business under the CGST/HGST Act. However, it held that the company is **ineligible to avail input tax credit** on such goods because they are gifts, and the bar in section 17(5)(h) applies. The FoC items were therefore treated as gifts despite being promotional in purpose.

R Reasoning

The authority read furtherance of business widely, relying on the Black's Law Dictionary meaning and the Gujarat High Court decision in Cinemax India Ltd., so promotional activity counts as business use. On credit, it examined the definition of consideration in section 2(31) and found that the FoC items were not supplied in return for any payment, since the consideration paid for the cars did not relate to the free goods. It treated the items as gifts, observed that a company's policy cannot override the statute, and held that section 17(5)(h) denies credit on

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

goods disposed of by way of gift or free samples. The applicant's reliance on the Gift-tax Act definition and the CESTAT decision in Shree Cement was not accepted on this point.

P Provisions Relied On

- Section 2(17) CGST Act (definition of business)
- Section 2(31) CGST Act (definition of consideration)
- Section 2(59) CGST Act (definition of input)
- Section 2(62) CGST Act (definition of input tax)
- Section 16(1) CGST Act (entitlement to input tax credit)
- Section 17(5)(h) CGST Act (goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples)
- Section 2(xii) Gift-tax Act, 1958 (definition of gift, cited by the applicant)
- Section 97(2) CGST/HGST Act (provision under which the question was raised)

! For the Practitioner

Practitioners advising on FoC promotional items at launches or brand events can use this order to see the Authority's view that such items are gifts, so input tax credit on them is blocked under section 17(5)(h) even though the expense is promotional. The order binds only the applicant and is an advance ruling, so it has no binding force on other taxpayers. It does not decide whether goods given without consideration fall outside the gift definition in other fact patterns, such as items sold at a nominal price or distributed under a documented trade scheme. Read the full order to test the consideration analysis against the client's facts.

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 -> har_aar_49_2018-19_10.04.2019_bmwipl.pdf

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