SANOFI INDIA LIMITED

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-115/2018-19/B-43, Mumbai, dt. 24/04/2019 Dated **24.04.2019**

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 through group entities. Under the Shubh Labh trade loyalty programme, wholesalers earn reward points on quantity purchased and redeem them for catalogue items such as watches and foreign trips. Separately, the company distributes branded pens, notepads and key chains to distributors and doctors as brand reminders. The applicant claimed ITC on the GST paid on the goods procured for both schemes.

H Ruling

Shubh Labh Loyalty Program: ITC on GST paid on goods and rewards given to wholesalers	**Answered in the negative. ITC not available.**	The items are treated as gifts under s.17(5)(h), and the Circular dated 7 March 2019 on buy more, save more offers is held not applicable.
Brand reminder goods (pens, notepads, key chains) given to distributors and doctors	**Answered in the negative. ITC not available.**	Treated as gifts without consideration and blocked under s.17(5)(h), notwithstanding the s.16(1) business-use argument.

The authority answered both questions in the negative, so ITC is not available on the GST paid for either scheme. It treated the free items as gifts made without consideration and not under any enforceable contract, which brings them within the **blocking provision of section 17(5)(h)** . It also held that the applicant could not take inconsistent positions, claiming on one hand a contractual obligation and on the other a supply without consideration.

R Reasoning

The authority held that section 16(1) entitles a registered person to ITC on inputs used in the course of business, but section 17(5)(h) overrides it for goods disposed of by way of gift or free samples. It adopted the dictionary and Gift-Tax Act 1858 meaning of gift, a transfer without consideration, and found no enforceable contract because the applicant had not produced a signed agreement with wholesalers or doctors. It rejected the argument that the items were business assets under Schedule I entry 1, and held that the Circular on sales promotion discounts did not fit the facts. It also noted the applicant's inconsistency: it described the watches as contractual consideration

for sales targets but described the supplies as free.

P Provisions Relied On

- Section 16(1) CGST Act, 2017 (ITC on inputs used in the course or furtherance of business)
- Section 17(5)(h) CGST Act, 2017 (ITC blocked on goods disposed of by way of gift or free samples)
- Section 17(2) CGST Act, 2017 (exempt supplies)
- Section 7 CGST Act, 2017 (supply, including barter)
- Section 9 CGST Act, 2017 (levy)
- Section 15 CGST Act, 2017 (value of supply)
- Section 2(47) and Section 2(78) CGST Act, 2017
- Schedule I, entry 1 and entry 2, CGST Act, 2017
- Gift-Tax Act, 1858 (definition of gift)
- Circular No. 92/11/2019-GST dated 7 March 2019 (sales promotion schemes)
- Sonia Bhatia v. State of UP [1981 (3) TMI 250, Supreme Court] (meaning of gift)

! For the Practitioner

Practitioners running loyalty or reward schemes for distributors, or brand-reminder giveaways, can cite this ruling for the view that free goods supplied without a signed contract are gifts blocked by section 17(5)(h). The order is binding only on the applicant and rests heavily on the absence of written agreements, so it does not settle the position where a documented, enforceable scheme gives reward goods in exchange for sales. It also does not decide the ITC treatment of goods that are actually taxed as supplies, or the scope of the 7 March 2019 Circular for discount-type schemes. The order is appealable to the Maharashtra Appellate Authority for Advance Ruling.

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 -> maharashtra aar 115 2018-19 sanofi i ltd. 24.04.19.pdf

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