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LEGAL PRECEDENTS

PART A: ADVANCE RULINGS

1. **GST and ITC on goods supplied at discounted price under scheme**

The Applicant was engaged in supply of hosiery goods to retailers. The Applicant offered electronic goods to retailers at reduced or discounted price on purchase of specified quantity of hosiery goods.

The Applicant sought advance ruling from the Authority for Advance Ruling ('AAR') whether supply of electronic goods would qualify as individual supply or mixed supply or not. Secondly, whether Input Tax Credit ('ITC') would be available on procurement of such goods or not.

The AAR observed that supply of both set of goods is not for a single price and accordingly, it would not qualify as mixed supply. The AAR further observed that these supplies are not naturally bundled nor supplied in conjunction with each other. Accordingly, it would not qualify as composite supply. Also, the AAR held that as electronic goods are supplied at price (though discounted), it cannot be termed as gift and therefore, ITC shall be available thereon.

Kanahiya Realty Private Limited, 2021-VIL-371-AAR (WB)

NITYA Comments: This is positive ruling for taxpayers who offer promotional items to their distributors/dealers as part of scheme. The AAR held that ITC shall be available on promotional items supplied at nominal price. Even if promotional items are supplied at free of cost, ITC shall still be available.

While this ruling is favorable, the Department generally disputes that promotional items are undervalued. Further, in our view, instant supply is composite supply since it is industry practice to offer promotional items on FOC basis along with main goods.

PART B: CESTAT ORDERS

1. **Service Tax on remittances made to foreign representative offices**

The Appellant was engaged in export of pharmaceutical products and established representative offices at several places outside India. The Department demanded service tax under reverse charge on remittances made to overseas offices located considering it as consideration towards taxable service. The Appellant filed appeal before the CESTAT, challenging such demand.

The CESTAT held that foreign offices are merely established for promotion of objectives of Indian entity. The CESTAT also held that mere transfer of financial resources does not make it consideration for taxable services. There should be service element for levying tax on any transaction. Accordingly, there would be no levy of service tax on remittances made to overseas offices in absence of any service provided by foreign offices. Basis this, the CESTAT set aside the demand.

Kusum Healthcare Private Limited v. Commissioner, 2021-VIL-497-CESTAT-DEL-ST

NITYA Comments: *This ruling is correct. There is no supply from Company's one unit to another when only financial support is provided. Different units of a Company work for Company as a whole and not for respective units.*

RECENT NEWS

1. **GST on Diwali gifts: Companies could see implications on gifts doled out to customers, retailers**

<https://economictimes.indiatimes.com/news/economy/policy/gst-on-diwali-gifts-companies-could-see-implications-on-gifts-doled-out-to-customers-retailers/articleshow/86858014.cms>

2. **Same GST slab for ice-cream sold anywhere: Finance ministry**

<https://economictimes.indiatimes.com/news/economy/finance/same-gst-slab-for-ice-cream-sold-anywhere-finance-ministry/articleshow/86827692.cms?from=mdr>

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