

## PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING

Order No. 01/AAAR/CGST/KPH/2022 Dated: 01-06-2022

### Present:

1. Ms. Aruna Narayan Gupta, Chief Commissioner, CGST Commissionerate, Chandigarh Zone, Chandigarh
2. Sh. Kamal Kishor Yadav, IAS, Commissioner of State Tax, Punjab

Name and Address of appellant	K.P.H. Dream Cricket Private Limited Plot No.372, Industrial Area, Phase-9, Mohali, SAS Nagar, Punjab,160062
GSTIN	03AADCK3039P1ZF
Date of Application	21-06-2021
Jurisdictional Authority-Centre	(LUDHIANA),(MOHALI-I),(RANGE-I)
Jurisdictional authority-State	(Punjab),(Ropar),(Mohali),(Mohali - Ward No.3)
Represented By	Ms. Priyanka Singla, Advocate
Date of Personal Hearing	11-02-2022
Order of Authority of Advance Ruling	AAR/GST/PB/002 DATED 20.08.2018

### FACTS OF THE CASE

1. M/s KPH Dream Cricket Private Limited (hereinafter referred to as, '**Appellant**') having its corporate office at C-115, 1<sup>st</sup> Floor, Elante Office, Industrial Area, Phase-1, Chandigarh – 160002 with GSTIN No. 03AADCK3039P1ZF has entered into a Franchise Agreement in the month of April, 2008 with the Board of Control for Cricket in India ('**BCCI**') for the purpose of establishing and operating a cricket team in the Indian Premier League ('**IPL**') under the title of '**Punjab Kings**'. Appellant participates in the IPL with other franchisees where the matches are held at the home and away venues as designated by the BCCI-IPL.
2. The Appellant intends to distribute match tickets to local Governmental authorities/officials, consultants, etc. free of cost as a goodwill gesture for promotion of business. These tickets are to be distributed without any consideration flowing from the receivers to the Appellant.
3. Consequently, the Appellant approached the Ld. Authority for Advance Ruling, ((hereinafter referred to as, "**AAR**") Punjab with the intention of seeking clarity on the treatment and possible GST liability on the supply of complimentary tickets on account of courtesy/ public relationship/ promotion of business, with the above mentioned questions.



4. The Ld. Authority vide its Order No AAR/GST/PB/002 dated 20<sup>th</sup> August, 2018 ((hereinafter referred to as, “**Impugned Order**”) received by the Appellant on 04<sup>th</sup> September, 2018 held that activity of providing complimentary tickets without any consideration would be considered as supply of services and the Appellant would be eligible for Input Tax Credit (hereinafter referred to as, “**ITC**”) in respect of complimentary tickets.
5. The Ld. Authority held that when Appellant issues a complimentary ticket to any person, the Appellant is displaying an act of forbearance by tolerating persons who are receiving the services provided by the Appellant without paying any money, which other persons not receiving such complimentary tickets would have to pay for.
6. The Ld. Authority also held that the monetary value of this act of forbearance would be the amount of money charged from the persons paying for the tickets for availing the same service.
7. The Ld. Authority invoked Clause (e) of Schedule II of the Central Goods and Services Tax Act, 2017, ((hereinafter referred to as, “**CGST Act**”) that agreeing to the obligation to refrain from an act or to tolerate an act or situation, or to do an act would be treated as supply of services. It was held that even without consideration and based on the provisions of Schedule II read with clause (a) and (d) of sub-section (1) of Section 7 of the CGST Act, the transaction can be termed as supply and leviable to tax under CGST Act.
8. The Appellant, aggrieved with the decision, has filed an appeal with the Appellate Authority for Advance Ruling u/s 99 of the Punjab GST Act, 2017/CGST Act, 2017.

## II. Order of the Authority for Advance Ruling:

Relevant extract of the order No. AAR/GST/PB/002 DATED 20.08.2018 is reproduced below:

*“Accordingly we pronounce the following Advance Ruling under section 98(4) of the Punjab GST Act, 2017 and CGST Act, 2017:*

*The activity of the appellant of providing complementary tickets free of charge to some persons would be considered supply of services as per provisions of both Section 7(1)(a) and 7(1)(d) and would therefore be leviable to tax as per provisions of Section 9 of the CGST Act 2017 parallel section 9 in the Punjab GST Act, 2017. Since all tickets supplied by the appellant including complementary tickets would be taxable, the appellant would clearly be eligible for claim of Input Tax Credit as per the provisions of Section 16 of CGST Act, 2017.”*



### III. **Submission of the appellant:**

#### **TAXABILITY OF COMPLIMENTARY TICKETS**

##### **A. Section 7(1)(a) of the CGST Act, 2017 does not cover free supply**

A.1 The appellant submitted that the CGST Act has introduced the concept of 'supply' as a taxable event and done away with the erstwhile taxable events of sale, service, manufacture etc. Even though the CGST Act does not specifically define 'free supply', the pre-GST regime recognized and provided for the treatment of supply where there was no consideration during the transfer of goods or services.

A.2 Under the GST regime, the treatment of free supplies made to related and unrelated parties differ and even though GST was contemplated to treat goods and services alike, the provisions relating to the Input Tax Credit (ITC) of free supplies of goods and services differ. To begin with, the definition of supply includes the following four elements:

- i. All forms of supply such as sale, transfer, barter, exchange, license, rental, lease and disposal
- ii. Flow of consideration (except activities specified in Schedule I of the CGST Act,
- iii. Supply from one person to another
- iv. in the course of furtherance of business

A.3 However, in the impugned order (*para 4*), the Ld. AAR has vaguely applied the definition of consideration as defined under Section 2(31) of the CGST Act. The definition provides that any consideration, whether money or otherwise should have flown from the buyer to the supplier and accrue for the benefit of the later. So, the understanding that 'act of forbearance' is being carried out by the Appellant may be correct but the consideration cannot flow from the Appellant to itself. Therefore, the components of consideration do not get fulfilled.

A.4 The Appellant further submitted that as the Government officials/ consultants do not fall within the definition of 'related persons' and the supply of tickets is only made as a goodwill gesture. It was also submitted that there is no expressed or implied consideration promised by the Government Officials or Consultants to the Appellant at the time of receipt of the tickets or in the future.

##### **Decoding actual nature of the transaction:**

A.5 The Appellant referred the following definitions to enunciate on the nature of the transaction carried out between the Appellant and the receivers of complimentary tickets:



*“Section 2(47) of the CGST Act defines ‘exempt supply’ as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act and includes non-taxable supply.*

*Section 2(78) of the CGST Act defines ‘non-taxable supply’ as a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.*

*‘Taxable supply’ is defined under under Section 2(108) of the CGST Act means a supply of goods or services or both which is leviable to tax under this Act.”*

A.6 Therefore, on the perusal of the above definitions, the appellant submitted that the Ld. AAR ought to have appreciated the exact nature of the transaction and held that the complimentary distribution of tickets to Governmental Officials or Consultants is of the nature of ‘non-taxable supply’ and therefore fails to be categorized as a ‘supply’ under the CGST Act, 2017. The Appellant submits that in light of the above discussion, such free supplies to unrelated persons ought to be considered as outside the definition of supply under Section 7(1) of the CGST Act and subsequently, beyond the purview of the CGST Act.

**B. Section 7(1)(d) of the CGST Act, 2017 is omitted and therefore not applicable post amendment**

B.1 The appellant submitted that the Ld. AAR has also concluded that the supply of complimentary tickets shall be within the ambit of Section 7(1)(d) of the CGST Act which read as follows:

*“7.(1) For the purposes of this Act, the expression “supply” includes –*

*(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II”*

B.2 However, with the ambiguity of the provision, the government sensed that it may be interpreted incorrectly and thus omitted Section 7 (1)(d) vide the CGST (Amendment) Act, 2018 with effect from 01.07.2017.

B.3 The perusal of the amendment also indicates that the intent of Schedule II of the CGST Act was only to classify certain transactions as either goods or services. It was never meant to include these transactions in the scope of supply even when there is no consideration.

B.4 Further, the amendment has inserted sub-section 1A to Section 7 of the CGST Act with effect from 01.07.2017 which *inter-alia* specifically states that only the activities or transactions which qualify as a supply in accordance with Section 7(1) shall undergo the test of classification under Schedule II.



B.5 Accordingly, the application of Section 7(1)(d) of CGST Act is no more relevant for the activity of giving complimentary tickets and thus fails to qualify the test of supply in terms of Section 7 of CGST Act, 2017.

**C. Interpretation adopted in the Impugned Order is contrary to the clarification and FAQ's released by Central Board of Indirect Taxes & Customs (CBIC)**

C.1 The appellant has submitted that the CBIC has periodically released FAQs clarifying various sector-wise issues and while discussing the issues of free samples distributed in pharmaceutical sector and services provided by Banks and Insurance Sector at concessional rates.

C.2 It was clarified that no tax is payable on clearance of physician samples distributed free of cost as the value of supply is zero and no credit has been availed. Similarly, for the banking sector, it was clarified that in case of services provided at a concessional / differential rate to a recipient other than 'related party' / 'distinct person', there is no requirement for enhancing the value of services by invoking the CGST Rules, 2017.

C.3 Therefore, the interpretation adopted by the CBIC is of the basis that when there is no consideration involved and the parties are not related then the transaction shall not be considered as a supply and is not taxable under the CGST Act.

C.4 It is also submitted by the appellant that in absence of any clarity on the instant issue of 'complimentary tickets' at hand, accepting the view that favours similar transactions of one sector and not the other shall not only bring ambiguity rather than uniformity in law, but is also unfair and against the objective of GST.

**ITC ON COMPLIMENTARY TICKETS**

**D. Input Tax Credit eligible in respect of complimentary tickets**

D.1 The Appellant submitted that it avails the Input Tax Credit on several inputs and input services towards providing complimentary tickets as per the provisions of the CGST Act.

D.2 The Appellant submitted that there has been no contravention of any provisions of Section 16 (1) of the CGST Act which provide the eligibility and conditions for availing ITC has been prescribed.

D.3 The Appellant submitted that Section 17(2) lays down that the requirement of reversal of the ITC arises in the situations where the inputs and input services have been used partly for effecting taxable supplies and partly for effecting exempt supplies, which includes non-taxable supplies. This provision is also



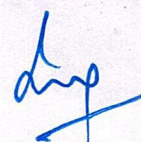
not applicable in the present case as the distribution of tickets does not qualify as 'supply' under any of the provisions of CGST Act

- D.4 Furthermore, it is submitted by the appellant that Section 17(5) of the CGST Act lists down the specific scenarios where the ITC shall be restricted and not be available. The relevant provision reads as follows:

*"(5) Notwithstanding anything contained in sub-section(1) of Section 16 and subsection (1) of Section 18, input tax credit shall not be available in respect of the following, namely:*

*(h) goods lost, stolen, destroyed, written off or disposed of by gift or free samples"*

- D.5 Therefore, the Appellant humbly submitted that upon perusal of the relevant legal provisions, it may be inferred that there is no expressed provision for reversal of ITC under the GST law when the services are provided free of cost without any consideration. Further, the Appellant submits that the Ld. Authority in the impugned order has held that as the distribution of complimentary tickets falls under the definition of supply, hence, there shall be no restriction on availing of ITC. Which entails that in accordance with the legal provisions discussed above the ITC shall have to be reversed if the distribution of complimentary tickets do not qualify as supply.
- D.6 However, the Appellant submitted that it has been established above that even though the distribution of complimentary tickets does not amount to supply under the provisions of CGST Act, there is no requirement of reversal of ITC.
- D.7 Further, based on the description of services under the entry at ***S. No. 34 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017*** provides that the activities provided by the Appellant in the instant case shall be considered as supply of services. Hence, basis perusal of the above provisions, it can be observed that the eligibility of ITC is only denied for goods that are supplied as free samples and does not talk anything about services. Hence, the ITC on the complimentary tickets in the instant case is applicable
- D.8 It is submitted by the appellant that Section 16 of CGST Act provides that every registered taxable person shall in the manner specified in Section 44, be entitled to take credit of input tax charged on any supply of goods or services to him which are used or intended to be used in the course or furtherance of his business. Even though there is no definition available as to what shall include 'supply made in the course or furtherance or business', when the use of inputs/input services is helping in achieving the objectives of the business in a better and effective way, the corresponding ITC should be allowed.





D.9 The act of giving free supplies is similar to the promotional and advertising activities taken by every business and the same is inevitable. Thus, as the free distribution of tickets are not specifically excluded, they should be considered as 'in the course or furtherance of business'. Therefore, the ITC should be allowed.

**E. Right of withdrawal lies with the Appellant and cannot be denied**

E.1 The Appellant had requested for withdrawal of its Application of Advance Ruling on 13.08.2018 which was well in time before any decision was finalized. The Ld. AAR, without considering the facts and the practice followed in other states by the other AARs, rejected the withdrawal application on the ground that the *department is also a party in the instant matter and thus both the sides need to be heard and therefore the matter requires discussion on merits for closure.*

E.2 Further, the Ld. AAR rejected the withdrawal application on the grounds that not discussing the case on merits would be against public interest. However, as under the provisions of Section 102(1) of the CGST Act, the advance rulings pronounced shall be binding only to the Appellant/Appellant and the concerned officer or the jurisdictional officer in respect of the Appellant/Appellant. Hence, it is not clear as to how the withdrawal application would have been against public interest.

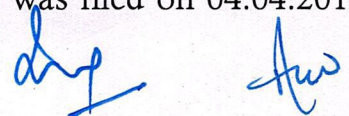
E.3 The Appellant also submitted that in their own case such withdrawal request was filed and was duly accepted by the Madhya Pradesh AAR reported at **2018 (9) TMI 695 - AAR, Madhya Pradesh In Re: KPH Dream Cricket Pvt' Ltd.**

E.4 The Appellant has also placed reliance on the decision of **Sainath Enterprises reported at 2016-TIOL-2836-ITAT-MUM** wherein the Mumbai Bench of ITAT observed that it was open to a petitioner/appellant to pursue or abandon a case. Withdrawal cannot be denied except when the person making the prayer has obtained some advantage/benefit, which he seeks to retain.

E.5 Hence, the appeal must be allowed on this ground only that the Appellant intended and expressed before the Ld. AAR that they wanted to withdraw the application.

**F. Ruling bad in law for being pronounced after the 90 days of receipt of application**

F.1 Without prejudice to the above submissions, the Appellant submits that Section 98(6) of the CGST Act reads that "*The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.*" In the instant case, the application before the Ld. AAR was filed on 04.04.2018



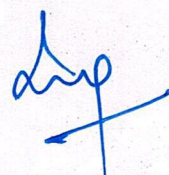


and the order was passed on 20.08.2018, which was beyond the time frame prescribed under law. Hence, the impugned order may be set aside on this ground and the appeal may be allowed.

**IV: Proceedings and Physical hearing:** Ms. Priyanka Singla appeared on the behalf of the appellant and she reiterated the submissions made during the course of personal hearing which have already been taken into record. She also reiterated the points made in the synopsis submitted by them.

**Discussion and Findings:**

1. We have carefully gone through the facts of the case, the grounds of appeal delineated by the appellant, order of Authority for Advance Ruling and the relevant legal provisions of the Act.
2. The primary question to be decided is whether the activity of providing “complimentary tickets” by the appellant falls within the definition of supply under the Punjab GST Act, 2017 / CGST Act, 2017 and whether the appellant would be required to pay tax on such complimentary tickets. As per the appellant, complimentary tickets are provided without any consideration as a goodwill gesture for promotion of business. These tickets are to be distributed without any consideration flowing from the receivers to the Appellant. In the absence of any consideration it cannot be treated as supply under section 7 of the Act.
3. The definition of supply under section 7 of the Act is an inclusive one and the broad contours of the supply have been defined to include all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The two key elements that are required to be present for any activity or transaction to fall within the ambit of supply are “**consideration**” as well as “**furtherance of business**”. The argument by the appellant that the earlier clause (d) of sub-section (1) of section 7 of the Act has been deleted retrospectively from 01<sup>st</sup> of July, 2017 by the amendment of the said Act has force and is found agreeable. The deduction from the said argument is that even if any activity or transaction has been mentioned in schedule II of the Act the same has to still fulfill the two key parameters i.e. presence of “**consideration**” as well as “**furtherance of business**” for it to be treated as supply under the Act.





4. In this particular transaction where the appellant is providing free complimentary tickets the question of furtherance of business has already been answered positively by the appellant himself. As for the question of presence of consideration in such transaction, the appellant has submitted that the element of consideration is missing in this transaction and therefore the same should not fall within the ambit of supply. While the Authority for Advance Ruling negated this argument by deploying the entry of clause (e) of paragraph 5 of schedule II of the Act whereby they have argued that the appellant has provided service by tolerating an act and therefore the consideration flows in such transaction.

5. It is important to look at the definition of “**consideration**” under the Act in order to appreciate its true nature. The definition is reproduced hereunder for reference:

*“Section 2 (31) consideration in relation to the supply of goods or services or both includes—*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”*

6. The key elements of “**consideration**” that emerge from the said definition are detailed hereunder:

- a) Consideration includes both the payment made as well as payment to be made. This signifies that the consideration is not only limited to the payment received but shall also include the payment which has not been received;
- b) Consideration can be in the form of money or otherwise. This implies that the consideration is not merely defined by the payment received in money but also includes the payment received in kind, which is other than money;

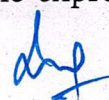


- c) Consideration to flow from the supply of goods or services or both i.e. it can be in respect of, in response to, or for the inducement of, the supply of goods or services or both. The important aspect here is that the consideration has to be linked with the supply of goods or services or both and that linkage can be in varied forms. It can be in respect of the supply or in response to the supply or even be an inducement for the supply;
  - d) Consideration can flow from the recipient or any other person but shall not include any subsidy given by the Central Government or a State Government. The matrix of consideration has been widened by not limiting its flow merely from the recipient. Any consideration that is flowing from any other person but can be linked to the supply of goods or services in the manner defined in para (c) above shall bring it within the fold of consideration;
  - e) The ambit of consideration has been widened by including the monetary value of any act or forbearance provided the same has the linkage with the supply as detailed in in para (c) above. It needs to be understood that any act or forbearance which has a linkage with the supply in a certain manner which may be either in respect of or in response to or for the inducement of would fall within the fold of consideration;
  - f) Lastly, the element of deposit given in respect of the supply of goods or services or both has been taken out of the fold of consideration. However, the same may be included in consideration when such deposit is applied as consideration for the said supply by the supplier.
7. Now, after identifying the key elements of consideration under the Act, the question that begets answer is whether the activity of complimentary tickets being provided by the appellant has the flavour of consideration present in it to bring it within the scope of supply under the Act. The aspect of payment in the form of money has already been taken out of the equation as the appellant has stated that they are not receiving any money for the complimentary tickets. So, now the other significant component that is emerging from the said transaction is whether any consideration in kind is flowing from the recipient to the supplier for the said activity or transaction. Although the concept of payment in kind has not been elucidated under the Act but the same has been thoroughly studied in various other forms under the Indian Contract Act, 1872. Even the provisions of the erstwhile Finance



Act, 1994 which governed the service tax regime had defined the non-monetary consideration. Further, the aspect of non-monetary consideration has been clarified by European Court of Justice and even by other tax authorities such as Australian Tax Office as well as UK HMRC. So, by exploring the definition of consideration in kind in these references the issue can be examined in the right perspective.

8. The Australian Taxation Office (ATO) in its GST Public Ruling on non-monetary consideration has clarified that where there is monetary consideration for a supply, it does not necessarily follow that there is no other consideration for that supply. The ATO states that merely ascribing a monetary amount or value to a thing will not cause it to be 'expressed as an amount of money'. In order to identify non-monetary consideration, there should be sufficient nexus between the supply and the non-monetary payment as consideration. Consideration for a supply may include acts, rights or obligations provided in connection with, in response to, or for the inducement of a supply. However, things such as acts, rights and obligations can often be disregarded as payments as they do not have economic value and independent identity separate from the main transaction. For a thing to be treated as a payment for a supply, it must have economic value and independent identity as compensation for the making of the supply.
9. Section 67 of the Finance Act, 1994 provided for valuation of taxable services for charging Service Tax. The said section provided that in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration. As per the Service Tax Education Guide non-monetary consideration essentially means compensation in kind such as the following:
  - Supply of goods and services in return for provision of service;
  - Refraining or forbearing to do an act in return for provision of service;
  - Tolerating an act or a situation in return for provision of a service;
  - Doing or agreeing to do an act in return for provision of service.
10. Further, while clarifying the concept of 'activity for a consideration' the said Guide emphasised that the same involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e. without the express or implied





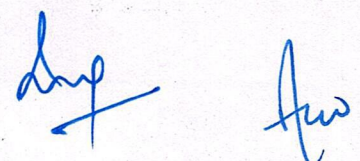
contractual reciprocity of a consideration would not be an 'activity for consideration' even though such an activity may lead to accrual of gains to the person carrying out the activity. Similarly, there could be cases of payments without an activity though they cannot be put in words as being "consideration without an activity". Consideration itself pre-supposes a certain level of reciprocity. Thus grant of pocket money, a gift or reward (which has not been given in terms of reciprocity), amount paid as alimony for divorce would be examples in this category.

11. Now, coming to the Indian Contract Act, Section 2(d) of the said Act gives a practical definition of consideration. The expression "*consideration*" is defined as follows:

*"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."*

12. The key point that emerges from the definition is that an act shall not be considered to be a good consideration for a promise unless it is executed at the desire of the promisor. This has been brought out by the Hon'ble Court in the case of **Durga Prasad v Baldeo [Durga Prasad v. Baldeo and Ors, [1881] ILR 3 ALLAHABAD 221** wherein the issue was that at the order of the collector, on his own expense, the plaintiff built certain shops in a bazar. The shops came to be occupied by the defendants who, as a consideration to the plaintiff for having expended finances for the construction of the shops, promised to pay him a commission on certain articles sold by their agency in the bazar. The action of the plaintiff to recover the commission was rejected. The only ground for the making of the promise is the expense incurred by the plaintiff in establishing the Ganj (market) but it is clear that anything done in that way was not at the desire of the defendants so as to constitute consideration. The act was not the result of the promise but of the collector's order.

13. Further, in the case of **Fazaladdin Mandal vs Panchanan Das on 2 December, 1955 (AIR 1957 Cal 92)** it was held by the Hon'ble Court that the consideration is the price of a promise, a return or quid pro quo, something of value received by the promisee as inducement of the promise.





14. Furthermore, in the case of **Chidambara Iyer v P.S. Renga Iyer, (1966) AIR 193, (1966)** it was laid down by the Hon'ble Supreme Court that consideration shall be something which not only the parties regard but the law can also regard as having some value. Though the Indian Contract Act does not imply that consideration must be good or valuable to sustain a contract, but it had always been understood that consideration should be of some value in the eyes of law. Consideration must not be unreal, or illusory, whether adequate or not.
15. The HMRC internal manual on supply and consideration (VATSC05100) defines consideration as a payment for the supply of goods or services. It is usually a payment in money, but can also be of a "non-monetary" nature, such as goods or services supplied in return. It further provides that in order that a supply for a consideration can be made, there must be at least two parties and a written or oral agreement between them under which something is done or supplied for the consideration. There is a direct link between the supply and the consideration because the supplier expects something in return for his supply and would not fulfil his obligation unless he thought that payment would be forthcoming.
16. The requirement for a direct link is brought out in three ECJ (European Court of Justice) cases. The case of **Staatssecretarissen van Financiën v Cooperatieve Aardappelenbewaarplaats ((1981) ECR 445; (1981)** involved a co-operative providing cold storage facilities to its members who had the right to store potatoes because of the share each member held in the co-operative. Charges were normally made to the members for the storage but for two consecutive years no charges were made. This resulted in a drop in the value of the shares (reflecting the co-operative's reduced profits because of the lack of storage fee income). The Dutch tax authorities argued that the reduction in value of each member's share was effectively consideration for the storage which had been provided for no fee. The ECJ rejected this argument. There was no direct link between the services of storage and the decrease in share values. Additionally the reduction in value of the shares could not be equated directly to the cost or any other measure of the value of the services provided.
17. In the case of **BAZ Bausystem GmbH v Finanzamt München für Körperschaften** the ECJ held that interest awarded to an undertaking by a



judicial decision was not consideration where the reason for the award was that the balance of the consideration for services was not paid by the due date, because it had no connection with the services provided and did not constitute consideration relating to a commercial transaction - it was simply compensation for the delay in payment.

18. In the case of **Apple & Pear Development Council (APDC), (ECJ (1988) STC 221; (1988)2 CMLR 394)**, the Council is a statutory body formed to promote the sale of apples and pears. Commercial growers were required to register with the council and pay an annual levy. The industry as a whole received the benefit of its promotional activities. The point at question was whether the levy was consideration for the promotional activities. The European Court held that there was no direct link between the supply made and the "payment" received, that is benefit, was not directly related to payments made, and individual growers were obliged to pay the levy, regardless of whether they benefited.
19. Further, the VAT Valuation (VATVAL05100) delineates the distinguishing features between non-monetary consideration and no consideration. As per the said manual "Non-monetary consideration" exists when a supply is made in return for payment in the form of goods or services. Where there is non-monetary consideration only, a "barter transaction" has taken place. When goods or services are provided for no payment in any form, there has been no consideration.
20. The inference drawn from the above delineations is that even for the consideration in the form of payment in kind, it should not be vague or illusory and there should be an element of reciprocity. If the argument by the Authority for Advance Ruling is agreed to and accepted that every kind of activity or transaction whether for gift or charity or for any other purpose shall fall within the domain of supply. The CBIC vide its Circular No. 92/11/2019-GST dated 7<sup>th</sup> March, 2019 has clarified that, *"goods or services or both which are supplied free of cost (without any consideration) shall not be treated as supply under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as supply under GST, except where the activity falls within the ambit of Schedule I of the said Act."*

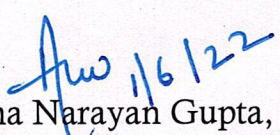


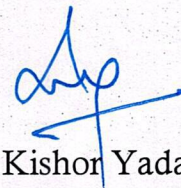
21. Thus, the argument by the appellant that on account of absence of consideration in such activity or transaction, the same should not fall within the territory of supply is well taken and therefore the activity of providing such free or complimentary tickets is not a supply as per the GST Act. However, it is important to note here that as per section 7 of the Act read with Schedule I any activity or transaction between the related person including employee shall be treated as supply even if the aspect of consideration is not there. So, where such complimentary tickets are being provided by the appellant to related person as defined in section 15 of the Act or to distinct person as defined in section 25 of the Act the same would fall within the ambit of supply even if there is no consideration.
22. As far as the question of availment of input tax credit (hereinafter referred to as, "ITC") is concerned, the appellant has tried to build upon the argument by deploying sub-section (5) of section 17 of the Act to argue that even though this transaction does not fall within the domain of supply but the availment of input tax credit cannot be denied. Here the appellant has conveniently missed the principle in relation to availment of ITC. Looking broadly at the scheme of things under the GST Act it can be deduced that the availment of ITC directly flows with the taxability of the outward supply. Where the output supply is either not taxable that is exempt or has been used or deployed for non business purpose the Act does not provide for availment of ITC in relation to such supply. Since the appellant itself has argued that the activity does fall within the domain of supply it consequently follows that it shall be treated as a non-taxable supply under the Act. The expression "exempt supply" as defined under the Act means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply. So, the activity of providing complimentary tickets is an exempt supply, and therefore there shall be no availment of ITC in relation to same in accordance with sub-section (2) of section 17 of the Act.
23. In light of the above discussion, the question raised by the appellant are decided in the following manner:
- a) Activity of providing free complimentary tickets does not fall within the domain of supply as it does not have the element of consideration. However, where such complimentary tickets are being provided by the appellant to a related person or a distinct



person the same shall fall within the ambit of supply on account of Schedule I of the Act and the appellant would be liable to pay tax on the same;

- b) The appellant would not be eligible to avail input tax credit in relation to such activity. But, where such activity or transaction is treated as supply on account of being provided by the appellant to a related person or a distinct person the appellant would be entitled to avail input tax credit for the same.

  
Ms. Aruna Narayan Gupta, IRS (C&IT)  
Chief Commissioner,  
CGST Commissionerate,  
Chandigarh Zone, Chandigarh

  
Sh. Kamal Kishor Yadav, IAS,  
Commissioner of State Tax,  
Punjab.

Place : Chandigarh

Dated : 01-06-2022