



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. KasiVisweswaraRao, Additional Commissioner (State Taxes)
Sri SahilInamdar, I.R.S., Additional Commissioner (Central Taxes)

A.R.Com/05/2023

Date: 30.09.2023

TSAAR Order No. 20/2023

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,
2017.]**

1. M/s. Orient Cement Limited, 5-9-22/57/D, 3rd Floor, GP Birla Centre, Adarsh Nagar, Hyderabad, Telangana-500063 (36AABCO5420A1Z2) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules..
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

- 4.1** The applicant M/s. Orient Cements Limited is into the Manufacturing and Sales of Portland Cements and has submitted this business details in the context of the application as follows:
1. That the Company is engaged in the business of manufacture of Ordinary Portland Cement ('OPC') & Pozzolona Portland Cement (PPC). The Company in its regular course of business incurs various marketing and distribution expenses. The said expenses are incurred with a view to promote their brand/products and enhance its sales.
 2. That the channel of distribution plays a pivotal role in achieving the marketing objectives of the company. That in order to achieve sales and marketing objectives, the applicant has launched various target/performance based discount schemes/white goods scheme for their dealers. That these schemes help the dealers to be motivated to achieve a specified target and in turn helps the company to achieve their sales targets or higher sales.

3. That under various schemes, the Company distributes different products among its dealers. Further, the Company also offers various promotional schemes "Monthly/Quarterly Quantity Discount Scheme", etc. The said sales promotion scheme helps the company in achieving their sales and collection targets.
4. That the company offers promotional schemes known as "Dealer White Goods Scheme". The said sales promotion scheme helps the company in achieving their sales targets.
5. That as part of the "Monthly/Quarterly Quantity Discount Scheme", specific slabs has been identified for different markets/locations specifying the quantity to be purchased, on a monthly basis, by the dealer in order to avail the benefit of the scheme.
6. That as part of the "Dealer White Goods Scheme" specific slabs has been identified for different markets/locations specifying the quantity to be purchased during scheme period, by the dealer in order to avail the benefit of the scheme.
7. That in the case any dealer from Telangana purchases 500 MT of OPC from the Company, a discount worth Rs. 9/- per bag shall be credited to his account. Higher the cement quantity purchased by the dealer, higher will be the discount earned by dealer resulting into higher eligibility of gold coins. At the end of the quarter, the Company purchases gold coins worth the total discount credited to the account of the dealer and distribute the said gold coins to the dealer as per the agreed terms of the promotional scheme. The invoice for the said gold coins is raised in the name of the Company and accordingly, ITC of the GST paid on the gold coins is claimed by the Company. Also the Gold coins distributed to dealers have the words "Birla At Premium Cement" embossed/embedded on the gold coins. The cost of gold coins is already taken into account by the company while finalizing the price at which cement is sold to the dealers.
8. That in the case of "Monthly/Quarterly Quantity Discount Scheme" and "Dealer White Goods Scheme" the benefit provided to the dealer is determined based on the amount credited to the account of the dealer which in turn is based on the quantity and the grade of cement purchased by such dealer. Subsequently, to pass on the benefit of such credit lying the dealer's account, the company distributes gold coins and white goods to such dealers instead of adjusting it against the payment to be received from such dealers or issuing them credit notes.
9. That the Applicant believes that the restriction laid down in Section 17(5)(h) of the Act is applicable only in respect of goods disposed of by way of 'gifts'. In the instant case, the gold coins and white goods distributed to the dealers cannot be regarded as 'gifts' on the dealer is eligible for the gold coins and white goods only to the extent of amount lying as credit to his account and is subjected to the satisfaction of the terms and conditions of the scheme
10. That the applicant also believes that the distribution of gold coins and white goods cannot be regarded as permanent transfer or disposal of business assets as the said restriction in respect of only those assets which are capitalized in the books of accounts and not in respect of the revenue expenditure. Further, the said distribution cannot be regarded as a supply under Section 7 of the Act as there is no consideration received by the applicant for much gold coins and white goods

4.2 The Applicant hereby seeks an advance ruling in respect of the following questions:

- i. Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as "goods disposed of by way of gift" and Input Tax Credit ("ITC") on the same would be restricted as provided under the Section (5)(h) of the CGST Act, 2017?

- ii. Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under SL. No. 1 of the Schedule-I to the CGST Act, 2017?
- iii. Whether the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/purchase target during the scheme period would be regarded as a supply under Section 7 of the CGST Act, 2017?

4.3 The applicant opined that ITC should be allowed of the GST paid on procurement of promotional products which are given to dealers as part of promotional schemes and submitted the following reasons:

1. That Section 16(1) of the Act deals with the availability of ITC to a registered person and Section 17(5) of the Act deals with Blocked credits. Therefore, it is pertinent to analyze these two provisions in detail to conclude that the ITC shall be available in respect of gold coins and white goods Issued to dealers as part of the promotional schemes
2. The applicant has drawn the attention of the AAR to the Section 16(1) of the said Act and abstracted it as follows:-

"Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the momer, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person".

Thus, they contended that credit is available for input tax paid on goods which are used for furtherance of business.

3. They further submitted that as per Section 17(5)(h) of the Act, "Input tax credit shall not be available in respect of the following, namely: goods lost, Stolen, destroyed, written off or disposed of by way of gift of free samples". As per the said provision, credit is not available in respect of goods which are given as gifts and free samples.
4. They submitted that, in case of gold coins and white goods distributed to the dealers, the same are distributed based on the quantity lifted by the dealers and the amount of discount the said dealer is eligible for. This ensures that the dealers are motivated to purchase higher quantity of cement in order to be eligible for the discount and in turn gold coins and white goods. This would result in the enhancement of the sales of the company.
5. They submitted that as per the provisions of the Act as highlighted above, every registered person is entitle to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.
6. They submitted that, the gold coins and white goods are provided to the dealers in furtherance of business so as to promote and enhance the sales of the company. Thus, ITC should be allowed of the GST paid on procurement of gold coins and white goods which are given to dealers as part of the promotional schemes. They submitted that whereas Section 17(5) of the Act covers gifts for the purpose of ineligible ere which is not the case of the Applicant.

4.4 They submitted that to constitute a gift the property should be transferred voluntarily and not as a result of a contractual obligation:

- i. They submitted that on a Plain reading of the aforesaid provisions it can reasonably be concluded that ITC has to be reversed with respect to any goods disposed of by way of gift or free samples. However, it is important that the ambit and scope of "gifts" is understood properly.
- ii. They submitted that Gift has not been defined under the Act. Hence, reference will have to be made to other Statutes and the jurisprudence available on the Gift, as per the Gift Tax Act (18 of 1858) has been defined to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth, Further reference can be made to the definition of gift in Corpus Juris Secundum, Volume 38, referred with approval by the Honorable Supreme Court in the use of Sonia Bhatia v. State of UP [1981 (3) TMI 250- Supreme Court), wherein "'gift' has been held to hit a voluntary transfer of property by one to another, without any consideration or compensation therefore A 'gift' is a gratuity and an act of generosity and does not require a consideration: if there a consideration for the transaction, it is not a gift. In the same case, it was also held that a gift is a transfer which does not contain any element of consideration in any shape and form Love, affection, spiritual benefit and many other factors may enter in the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law.
- iii. They submitted that borrowing the jurisprudential guidance from the observation of the Hon'ble Supreme Court in the matter of Shakuntala&Ors. Vs. The State of Haryana reported in 1979 3 (SCC) 226 is of much avail. The relevant paragraph of the said judgment is reproduced herein below for ready reference:

"It is therefore one of the essential requirements of a gift that it should be made by the donor "without consideration". Per word "consideration has not been defined in the Transfer of Property Act, but we have no doubt that it has been used in that Act in the same sense as in the Indian Contract Act and excludes natural love and affection. If it were to be otherwise, a transfer would really amount to a sale within the meaning of section 54 of the Transfer of Property Act, or to an exchange within the meaning of section 118 for each party will have the rights and be subject to the liabilities of a seller as to what he gives and have the rights and be subject to the liabilities of a buyer as to that which he takes. It is not necessary for us to examine the other modes of transfer, for they have no bearing on the nature of the controversy before us. It would thus appear that it is of the essence of a gift as defined in the Transfer of Property Act that it should be without "consideration" of the nature defined in section 2(d) of the Contract Act"

- iv. That the Australian High Court in the case of Commissioner of Taxation (Cth) Vs. McPhail [1968] 41 ALJR 346 held that to constitute a 'gift' the property should be transferred voluntarily and not as a result of a contractual obligation. In this case a person agreed to give a donation to a school in return of school charging less fees for the education of the child of said person. Hence, the Court held that such donation cannot be termed as 'gift' as it was made under a contractual obligation wherein school was required to charge lower fees against the donation made.
- v. They submitted that in light of the above, it is concluded that to constitute a "gift" following elements are required to be satisfied:
 - a. Supplies must be made without any contractual obligation. If any supply is made under a contractual obligation it cannot be termed as a 'gift'.
 - b. Supply must be made without any consideration in money or money's worth. Hence, supplies made out of love and affection or such other non legal considerations can only be termed as "gifts".

- vi. They submitted that it is indeed imperative, at this stage, to analyze the concept of promotion. The applicant submitted that the products distributed to its dealers are for promoting their brand and are in furtherance of business and thus, ITC of the GST paid on such products should be available.
- vii. That the Oxford dictionary has defined the term "promotion" as an activity that supports or encourages a cause, venture, the publicizing of a product, organization, or venture so as to increase sales or public awareness, Further, the term "furtherance" is defined as the advancement of a scheme or interest. In context of the term "furtherance of business" it means advancement of business of the company.
- viii. That the meaning of supply made in course or furtherance of business given in the FAQ on GST released by CBIC says-No definition or test as to whether the activity is in the course of furtherance of business has been specifier under the Act. That the following business test is normally applied to arrive at a conclusion whether a supply has been made in the course or furtherance of business:
 - a. Is the activity, a serious undertaking earnestly pursued?
 - b. a theilly, pursued with reasonable or recognizable continuity?
 - c. is the activity, conducted in a regular manner based on sound and recognized business principles?
 - d. is the activity, predominantly concerned with the making of taxable supply for consideration put motive?
- ix. That, if promotional items are considered as gift and the ITC on the same is disallowed, tris will have a huge impact across the businesses because in order to promote sales or to create goodwill, the companies carry out various promotional schemes including distributing goods for brand promotion.
- x. They submitted that based on the above submissions, the applicant shall be allowed to avail the ITC on gold coins and white goods distributed to the dealers as the same are incurred as in the course or furtherance of business and they cannot be regarded as gifts for the reasons mentioned above.

4.5 The applicant further contended that a contractual obligation is created between the applicant and the dealer which would enable either party to take recourse to a civil suit or action for specific performance of contract on failure to adhere to the terms and conditions.

- i. That the applicant wishes to submit that the Company and the dealer enter into a dealership agreement which would establish that, in light of the terms and conditions which the dealer accept, a contractual obligation is created between the applicant and the dealer which would enable either party to a take recourse to a civil suit or action for specific performance of contract on failure to adhere to the terms and conditions.
- ii. That, referring to Section 16 of the Dealership Agreement which states that "The Price chargeable for the Cement Products supplied to the Stockist shall be the price stipulated and as decided by the Company from time to time." Thus, the company is at complete liberty to decide the price to be charged for the supplies and the discounts to be provided to the dealers.
- iii. That any discount scheme (viz introduced Monthly/Quarterly Quantity Discount Scheme & Dealer White Goods Scheme") given by the company is communicated to the dealers and is known to them well before they make the purchases from the company. Only upon understanding the terms and conditions of the scheme, the dealer makes the purchases and becomes eligible for the discount as per the Monthly/Quarterly Quantity Discount Scheme and Dealer White Goods Scheme.

- iv. That dealers who are having an outstanding balance for more than 90 days shall not be eligible for the scheme even in case, they purchase the quantity falling under the slabs mentioned under the scheme
- v. That, a declaration is obtained from the dealer by the company for the confirmation of the receipt of the gold coin. The said declaration states that the 'Gold' is offered in proportion to the sale the dealer has achieved as mentioned in the scheme during the period.

4.6 That Gold coins and white goods distributed as part of the promotion schemes cannot be regarded as permanent transfer or disposal of business asset where itc has been availed on such assets:

- i. That the Sl. No. 1 of the Schedule-I of the Act states that "Permanent transfer or disposal of business assets where input tax credit has been availed on such assets" shall be regarded as supply even if made without a consideration. Thus, it is imperative to understand the term "Business Assets" in order to conclude whether the gold coins and white goods issued to dealers would fall under the said entry.
- ii. That the term "assets" is defined in various Dictionaries as below:

Black Law Dictionary, Ninth Edition "The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill."

Online Merriam Webster Dictionary - "the items on a balance sheet showing the book value of property owned."

- iii. That the General instructions for preparation of balance sheet and statement of profit and loss of a company are provided under Schedule III of the Companies Act, 2013. Assets therein are divided into non-current and current assets as follows:

"Non-current assets

(1) (a) Fixed assets

(1) Tangible assets (1)Intangible assets

(iii)Capital work-in-progress

(io) Intangible assets under development

(b) Non-current investments (c) Deferred tax assets (net)

(d) Long-term loans and advances (e) Other non-current assets

(2) Current assets

(a) Current investments

(b) inventories

(e) Trade receivables

(d) Cash and cash equivalents

(e) Short-term loans and advances

Other current assets."

- iv. That as per Note 1 to Schedule III of the Companies Act, 2013, "an asset shall be classified as current asset if it satisfied any of the following criteria:-
 - a. it is expected to be realised in, or is intended for sale or consumption in, the company's operating cycle;
 - b. it is held primarily for the purpose of being traded;
 - c. it is expected to be realised within twelve months after the reporting date; or
 - d. it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date. All other assets shall be classified as non-current."
- v. That in view of above, it can be understood that business assets are property or equipment that a Company owns that are primarily used for running the business. There are different categories of assets including current, non-current, short-term, long-term, operating, capitalized, tangible and intangible. Business assets are itemized and valued on the asset side of the Balance sheet.
- vi. That the assets mean the transactions which are recorded in the balance sheet of the organisation, that in an accounting sense, the said term refers to items appearing in the balance sheet of an organization. Furthermore, in general understanding, items of the balance sheet are only considered as assets. Various courts have consistently held that the meaning of a term not defined under the statute, can be derived from the meaning assigned to it in trade and industry. In this regard, reliance is placed on the following decisionst
 - (a) Dunlop India v. Uol, 1983 (13) ELT 1566 (SC)
 - (b) Pharm Aromatic Chemicals, 1997 (95) ELT 203 (Bom)
 - (c) Himani Ltd., 2011 (263) E.L.T. 335 (All) (d) Vicco Laboratories, 2005 (179) B.L.T. 17 (S.C.)
 - (e) Bella Premier Happy Hygiene Care Put. Ltd., 2018(17) GS.TL 603 (KAR)
- vii. That In view of the above, an asset in common parlance and trade understanding are considered as items of the balance sheet.
- viii. That, Schedule-II of the Act provides the list of activities or transactions to be treated as supply of goods or supply of services. Entry (4) of the said schechule pertains to the "transfer of business assets". Clause (a) of entry (4) provides that "where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods."
- ix. That it is evident from the aforesaid clause also that only those goods which are items of balance sheet of the company are considered as supply of goods and not all goods for the purpose of clause (a) of entry 4 of Schedule II of the Act
- x. That the term business asset mentioned under the entry 1 of Schedule-I shall be read with the clause (a) of entry 4 of schedule II, it is evident that the said entry is applicable only in case where goods which are part of the balance sheet are permanently transferred or disposed of.
- xii. That the entry (1) of schedule I specifically uses the term "business asset" whereas the entry (2) of the Schedule states that "supply of goods or services" or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is considered to be deemed supplies. Entry 3 provides that "supply of goods" between principal and agent is considered to be deemed supplies and entry 4 of the aforesaid schedule covers import of services from a related person. Therefore, it is evident that entry 2, 3 & 4 uses the term "goods or services".
- xiii. The term "goods" as defined under section 2(52) of the Act provides that "goods" means every kind of movable property. The said definition is reproduced below:

"(5) 'goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"

- xiv. That it is evident that the legislature has deliberately used the term "gooda" under entry 2 & 3 of the schedule- I with the intent to tax all categories of goods. Therefore, it is clear that the legislature with the conscious mind has widened the scope of entry a & a by using the term goods in the said entry.
- xv. That entry 1 of Schedule I is applicable on "permanent transfer or disposal of business assets". If the intention of the legislature was to tax all types of goods including the capital goods under the aforesaid entry 1, then the legislature would have used the "goods" which are available under entry 2 and 3. However, the legislature intentionally used the term "business asset" and therefore it is evident that the intention of the legislature was to restrict the scope of said entry to the business asset which is an item of balance sheet. Therefore, it is abundantly clear that the intention of the legislature is to apply the entry 1 of the schedule I only to the business assets which are item of the balance sheet and not to all the goods.
- xvi. That the term "assets" also includes inventory of the business. Therefore, even if it is assumed that the term "Business asset" used in Schedule-I also includes the inventory of the company then in such case any goods issued to any unrelated person without consideration would be deemed supplied under Sl. No. 1 of the Schedule-L. In such a case, the main crux of term supply for a consideration under Section 7 of the Act would get defeated thereby rendering Section 7 redundant. This would lead to a situation where anything and everything issued whether for a consideration or not would be subjected to GST under Sl. No. 1 of the Schedule-1 of the Act, which is not the intention of the GST law.
- xvii. That based on the above submissions, gold coins and white goods distributed cannot be regarded as "Business Assets" and therefore the distribution of gold coins and white goods to dealers as part of promotional schemes cannot be regarded permanent transfer or disposal of business assets where ITC has been claimed on such assets.

D. Gold coins and white goods distributed to dealers as part of the promotional scheme cannot be regarded as supply under section of the act

- i. That with regards to gold coins and white goods issued to dealers being treated as a supply under Section 7 of the Act, it is pertinent to analyse Section 7 of the Act.
- ii. That it is evident from the above definition that a transaction can be said to be a supply only if the same has been made or agreed to be made for consideration. Therefore, in the absence of consideration, then supply cannot be said to have been made.
- iii. That the term "consideration" is defined under section 2(31) of the Act. The same is reproduced below:
- iv. That the "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 consideration for the said supply:

- v. That the Section 2(31) of the Act provides consideration" an inclusive definition as any payment (in money or otherwise) or monetary value of any act or forbearance in respect of, in response to, or for the inducement of, the supply. It is submitted that "supply for consideration" as envisaged under Section 7 of the Act presupposes the existence of a reciprocal relationship between the supplier and recipient, where the supplier makes the supply in return for the consideration in money or otherwise flowing from the recipient. In other words, the nexus between the supply and consideration is sine qua non to constitute the taxable event of supply.
- vi. That in their case, there is no consideration received by the applicant from the dealers for the gold coins and white goods distributed to them. Therefore, based on the above submissions, the gold coins and white goods issued to dealers as part of the discount / Incentive schemes cannot be regarded as supply under Section 7 of the Act.

In view of the above submissions, the Applicant requested a ruling as under:

- 1. That the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would not be regarded as "goods disposed of by way of gift" and Input Tax Credit (ITC) on the same would not be restricted under the Section 17(5)(h) of the CGST Act, 2017
- 2. That the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be not regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would not be treated as a supply even if made without consideration as stipulated under Sl. No. 1 of the Schedule- I to the CGST Act, 2017
- 3. That the applicant's obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/purchase target during the scheme period would be not regarded as a supply under Section 7 of the Act;

4.2 Company Background:

Applicant M/s. Orient Cement Limited, Established in 1979, Orient Cement was formerly, a part of Orient Paper & Industries. It was demerged in the year 2012 and since then, it has emerged as one of the fastest growing and leading cement manufacturers in India. Orient Cement began cement production in the year 1982 at Devapur in Adilabad District, Telangana. In 1997, a split-grinding unit was added at Nashirabad in Jalgaon, Maharashtra. In 2015, Orient Cement started commercial production at its integrated cement plant located at Chittapur, Gulbarga, Karnataka. With a total capacity of 8 MTPA, they serve Maharashtra, Telangana, Andhra Pradesh, Karnataka and parts of Madhya Pradesh, Tamil Nadu, Kerala, Gujarat and Chhattisgarh.

The product mix includes Pozzolana Portland Cement (PPC) & Ordinary Portland Cement (OPC) marketed under the brand name of Birla.A1 – Birla.A1 Premium Cement and Birla.A1 StrongCret.

5. QUESTIONS RAISED:

1. Whether the applicant's obligation to issue gold coins and white goods to the dealers / customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as "goods disposed of by way of gift" and Input Tax Credit ("ITC") on the same would be restricted as provided under the Section 17(5)(h) of the CGST Act, 2017?
2. Whether the applicant's obligation to issue gold coins and white goods to the dealers/ customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No. 1 of the Schedule-I to the CGST Act, 2017?
3. Whether the applicant's obligation to issue gold coins and white goods to the dealers/ customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as a supply under Section 7 of the CGST Act, 2017?

6. PERSONAL HEARING:

The Authorized representatives of the unit namely Sri.AshwaniPahwa, CA & AR and Smt. Megha Agarwal, CA attended the personal hearing held on 20.03.2023. The authorized representatives reiterated their averments in the application.

Further, the Authorized Representative/Applicant M/s. Orient Cement Limited, Mancherial, reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. DISCUSSION & FINDINGS:

The applicant is transferring different Goods to its dealers as incentives for achieving their sales targets. These Goods include Gold Coins or White Goods such as a Microwave, Split Ac etc. The dealer of the applicant also has an option to choose any of the Goods under the incentive Scheme.

The applicant has in his contentions treated the above transaction neither as gift nor as supply of Goods. The applicant excludes the transaction from the preview of CGST without configuring the nature of the transaction by arguing as follows:

1. According to the applicant the transfer of movable property is happening under a contract. Therefore it is not voluntary transfer and hence it cannot be treated as a gift. Hence, according to the applicant, there cannot be a restriction of ITC on the purchase made by the applicant under section 17(5) (h) of the CGST Act.
2. To support his argument that transfer of goods by the applicant to his dealer is not a gift, the applicant submits that there is a contractual obligation on his part to transfer the incentive Goods to his dealer once the threshold sales are reached by the dealer and that if such transfer of incentive Goods does not take place even after the set target is reached by the dealer, then the dealer can sue the applicant in a civil court for non performance of the contract.
3. According to the applicant the transfer of Gold Coins and White Goods is not permanent transfer or disposable of permanent asset. Therefore it does not fall under Schedule-1 to the CGST Act and hence cannot be taxed as such under the said Schedule.
4. According to the applicant, the transfer of Gold Coins and White Goods is not supply has described under Section 7 of the Act because there is no consideration paid by the recipient of the Goods.

Thus, in sum and substance, the argument made by the applicant is that the transfer of goods by him to his dealers is neither a supply under Section 7 of the CGST Act and therefore it cannot be taxed under the charging sections nor a gift and therefore ITC cannot be denied on the purchases of these goods made by the applicant.

To understand the nature of contract between the dealers and the applicant it is necessary to go through the provision of White Goods "Scheme" and the agreement made with the stockiest by the applicant in this regard.

- a) The applicant has in his internal circular to his dealers announced a "points" based incentives with three alternatives among an electronic item or a vehicle or gold. The points are nothing but the various growth percentages achieved by them in different categories of their sales centers. This scheme has a monthly bonus calculator to add bonus points where ever the growth over the same month compare to previous year is record.

Similarly the Scheme also has a penalty calculator to reduce the number of points earned for the de-growth recording by such stockiest or dealers in any particular month. Accordingly, the dealer will receive goods in proportion to the net points scored by him by selling cement.


- b) Thus, the Scheme induces the Stockiest or dealers to achieve higher growth in their sales month on month, year over year so that they will be eligible to receive quantified incentives. The incentives are given not uniformly but according to the "Point Slabs" in which such a stockiest point. Therefore, the points achieved by the stockiest or the dealer will determine the type of incentive they are going to receive. Thus, the goods received as incentive are in proportion to the net points gained by the dealer relatable to the quantity of cement sold by them.
- c) The Section 7 of the GST Act covers transactions such as "transfer", "barter" and "exchange" of goods or services or both under the expression "supply" if agreed to be made for a consideration by a person in the course or furtherance of business.
- d) Clause (b) of sub-section (31) of Section 2 states that "consideration" in relation to the supply of goods or services or both includes the monitory value of any act in respect of, in response to, or for the inducement of the supply of goods or services or both. Thus:
 - (i) The monitory value of an act done in response to inducement of goods or services is consideration.
 - (ii) Black's Law Dictionary defines inducement as '[t]he act or process of enticing or persuading another person to take a certain course of action'.
- e) Seen in light of the above fundamental statutory position the transaction in the case of the applicant is one of supply of goods to his dealers in exchange for consideration. The Consideration is the monitory value of the "act" of attaining a level of business indicted in the incentive scheme by the applicant. The applicant is inducing his dealers / stockiest to attain a particular level of business as a consideration for the goods to be supplied by him.
- f) Thus, the applicant is making supply of white goods and gold to his dealers or stockiest in return for the dealers or stockiest attaining a threshold of sales indicated in the scheme and therefore, the value of white goods and gold supplied by him are for the 'act' of achieving this threshold and therefore taxable in his hands. The value of the goods supply is determined under Section 15 of the GST Act read with Rule 30 of the CGST Rules.

8. In view of the foregoing, we rule as follows:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether the applicant's obligation to issue gold coins and white goods to the dealers / customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as "goods disposed of by way of gift" and Input Tax Credit ("ITC") on the same would be restricted as provided under the Section 17(5)(h) of the CGST Act, 2017?	The transaction is taxable as supply of goods therefore eligible for ITC.
2. Whether the applicant's obligation to issue gold coins and white goods to the dealers/ customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No. 1 of the Schedule-I to the CGST Act, 2017?	The transaction is supply of goods and not permanent transfer or disposal of business assets.
3. Whether the applicant's obligation to issue gold coins and white goods to the dealers/ customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as a supply under Section 7 of the CGST Act, 2017?	Yes


(S.V. KASI VISWESWARA RAO)
(ADDL. COMMISSIONER (STATE TAXES))


(SAHIL INAMDAR)
(ADDL. COMMISSIONER (CENTRAL TAXES))

[under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]

To
M/s. Orient Cement Limited,
5-9-22/57/D, 3rd Floor, GP Birla Centre,
Adarsh Nagar, Hyderabad,
Telangana-500063.

Copy submitted to :

1. The Commissioner (State Taxes) for information.
2. The Commissioner (Central Taxes), Secunderabad Commissionerate, 4th Floor, GST Bhavan, Hyderabad, Telangana - 500004.

Copy to:

3. The Joint Commissioner(Central Taxes), Adilabad Division.