

## Gold Coins/ white goods given free by principals to dealers for achieving targets are supply under GST

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The gold coins and white goods distributed by principals to the dealers, on the quantity lifted by the dealers, cannot be regarded as 'gifts' as 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. This would result in the enhancement of the sales of the company and could be considered as furtherance of business. The transfer is not gratuitous and cannot be demanded, to qualify as gifts. Hence ITC on transfer of such gold coins would not be regarded as blocked ITC u/s 17(5)(h) of The CGST Act 2017. The Honourable Supreme Court in the case of Sonia Bhatia v. State of UP [1981 (3) TMI 250- Supreme Court] - 1981-VIL-06-SC, ruled 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.

The distribution of gold coins and white goods cannot be regarded as permanent transfer or disposal of business assets as the said gold coins are not 'assets' which held in generating 'future cash flows' for the taxpayer. An asset in common parlance and trade understanding are considered as items of the balance sheet. However, the gold coins discussed above are charged off to the P/L Account as a 'sales promotion' expense. Thus, they should not be considered as supply u/s 7(1)(c) read with Sl No 1 of Schedule I of The CGST Act 2017 –

*"Permanent transfer or disposal of business assets where input tax credit has been availed on such assets."*

They would also not be deemed a supply u/s 7(1)(a) read with Sl No 4 of Schedule II of The CGST Act 2017 *"Transfer of business assets 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, <sup>2</sup>[Omitted] such transfer or disposal is a supply of goods by the person"*. The reason is the same, that they are not assets itself. Further no consideration is exchanged for such transfer also which is a pre-condition for application of such entry.

Entry 3(i) of Schedule I provides that "supply of goods" by principal to agent is considered to be deemed supplies when the agent undertakes to supply such goods on behalf of the principal. However, in this case there is no such further supply of gold coins by the agent.

However, The AAR Telangana in the case of M/s ORIENT CEMENT LIMITED [2023-VIL-193-AAR] has held that 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.

This AAR seems to thus create a new fiction under GST Law whereby a 'free service' would be deemed to be a 'consideration'. Hence, even if considered that the dealers are providing the 'act/service for free' for gold coins supplied by the principal; then also the question arises is whether this 'act/service for free' is a consideration. This ruling seems to stretch the implications of the GST Law beyond imagination. Again, it has also opened a new door for litigation – whether this 'act/service for free' by dealers would be considered as an independent supply too where the consideration is the gold coin!

**BRIEF ABOUT THE AUTHOR:**

Vivek Jalan is a Chartered Accountant & a qualified L. LM & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – Economic Affairs and Taxation Committee (ER). He is the Chairman of The Fiscal Affairs and Taxation Committee of The Bengal Chamber of Commerce and Industry. He is the Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Business Standard, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Direct and Indirect Taxes which reaches more than 70000 professionals.

He is also a visiting faculty in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce, The Merchant Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 18 years of experience in the field of Information Technology, Finance, Taxation and Logistics. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books include the following –

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- HOW TO HANDLE GST LITIGATION– September 2022
- HANDBOOK ON GST– June 2022
- GST PLEADING & PRACTISE – August 2021 – **India's Bestseller**
- UNION BUDGET 2021 – February 2021
- SECTIONWISE COMPENDIUM ON GST – October 2020
- INTEGRATED APPROACH TO E-INVOICING E-WAYBILL & RETURN FILING – October 2020
- COMMENTARY ON UNION BUDGET 2020– Feb 2020
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
- **SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018**
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- "SERVICE TAX AND VAT IN WORKS CONTRACT: A COMPREHENSIVE TECHNICAL GUIDE".

He is a regular speaker at various professional forums on the various key areas in Finance and has delivered more than 300 lectures on various topics under Information Technology, Finance, GST, Customs, Foreign Trade Policy of India, Income Tax, etc.