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***CRITICAL ANALYSIS OF ITC ON FREE SAMPLES UNDER GOODS & SERVICE TAX
IN INDIA***

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CONTENTS

1. Rewriting International Tax Norms for Sustainability
Preeti Lakhera 1

2. Conundrum of Financial Viability of Himachal Pradesh: A Historical, Economic & Legal Scrutiny
Hari Chand Thakur & Surya Dev Singh Bhandari 14

3. Steering Influence of Tax Laws over M&A Transactions: Reflections on Changing Landscape in India
Tarun Jain 37

4. Saving Mr. Tax Arbitration: Use of Institutional Arbitration for Tax Treaties
Ahan Gadkari 51

5. The Slow Extinction of Wealth Tax: How Far is it Justified
Chetan R. 80

6. Tax Regime at the Dawn of Digital Currency: A Study on the Repercussions of "The Union Budget 2022-23"
Tamasi Biswas 93

7. Interest on Late Payment of TDS Constitutes Expenditure or Not: An Analysis
Prasenjeet Kumar 104

8. Taxing the Agricultural Income: A Legal and Policy Analysis
Shreya Maloo 116

9. Taxation of Virtual Digital Assets in India: A Critical Analysis
Vatsa Akanksha 130

10. Critical Analysis of ITC on Free Samples under Goods and Service Tax in India
Anil Sain & Subham Chouhan 138

CRITICAL ANALYSIS OF ITC ON FREE SAMPLES UNDER GOODS AND SERVICE TAX IN INDIA

Anil Sain *

Subham Chouhan **

[Abstract: A registered recipient of goods or services will pay tax in the form of State Goods and Service Tax (SGST), Central Goods and Service Tax (CGST), or Integrated Goods and Service Tax (IGST) & Union Territory Goods and Service Tax (UTGST) which is referred to as Input Tax Credit (ITC). While selling the products or services to any registered recipient, registered suppliers must collect this tax. This indicates that this idea only applies to service recipients and buyers who have registered for GST. ITC, also includes GST paid by the registered recipient of supply on a reverse charge basis on a list of certain products or services, such as Goods Transport Agency, Legal Services, etc. and IGST paid on goods imported. Some goods and services taxes (GST) are non-refundable, despite the fact that you had paid them when you made your purchases or paid your expenses. Blocked Input Tax Credit refers to the GST that you are unable to claim under the provisions of the GST law in India which are under Section 17(5) of the Goods and Service Tax Act, 2017. This paper presents an overview and understanding of Blocked ITC with special reference to goods disposed by way of gifts and free samples.]

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I

INTRODUCTION

The input tax paid on any supply of goods or services utilised in the course of furtherance of business may be claimed as a credit by any registered person. The phrase "furtherance of business" can refer to the development or promotion of business-trade, commerce, manufacture, etc. Credit may be used for products or services that are associated with actions that result in the taxable supply of products or services.¹ If the requirements for the possession of a tax invoice, receipt of the goods, payment of the tax, and filing of returns are met, then this credit may be utilised.

Blocked credit² is addressed in Section 17(5) of the CGST Act. The ITC on presents is covered under clause (h) of Section 17(5). Clause (h) of section 17(5) blocks ITC on Goods that are disposed of by way of gift, lost goods, distributed by way of free samples, stolen goods, destroyed goods, goods that are written off.

II

CONCEPT OF ITC

The tax that the buyer pays when purchasing goods or services is known as an Input Tax Credit. Input tax credit refers to the tax paid at the time of purchase that is subtracted from the responsibility due on supplies coming from outside the country.

In other words, the output tax due on sales is reduced by the amount of the input tax credit. Understanding ITC through Illustration:

A person purchased goods worth Rs 90,000 and the GST payable was 18%, the goods were sold for Rs 1,10,000. GST being the same, that is, 18%.

Computation of GST and ITC:

Outgoing GST due	19,800
(-) GST paid while purchasing goods	16,200
	3,600

Hence, Rs. 3600/- in cash is the net GST payable.

As seen above, the reduced amount of Rs 16,200 represents the input tax credit

¹ For Apportionment of Credit and Blocked Credit, *see*, Central Goods and Service Tax Act 2017, S. 17.

² *See*, The CGST Act 2017, S. 17(5).

that was taken advantage of and paid on purchases.

III

UNDERSTANDING GIFT

The term gift is nowhere defined in the GST law and reliance on Judicial precedents or definitions of gift in other laws is considered. In the Gift Tax Act, 1958 the word 'gift' has been defined in Section 2(xii) as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth.

'Gift' under Section 122 of the Transfer of Property Act, 1882 is defined as the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

In *Sonia Bhatia Case*³ The Supreme Court defined the term 'gift' as " a voluntary transfer of property by one to another, without any consideration or compensation therefore". In simple words, a gift is voluntary in nature, is made occasionally and without consideration. It cannot be claimed as a matter of right.

IV

UNDERSTANDING SAMPLE

Sample is also left undefined under the GST law and the dictionary meaning of the word sample is a small number or amount of something that is looked at, tested, examined, etc. to find out what the rest is like. Input Tax Credit under the supplier's control with regard to sales promotion plans.⁴

Sample and gifts: Samples that are given out without charge or payment are not considered "supplies" for purposes of the GST, unless the activity is covered by Schedule I of the CGST Act.

To the extent that they are utilised in connection with gifts or free samples given away without asking for anything in return, the provider shouldn't receive ITC on the input services, inputs and capital products. However, the provider would be qualified to receive the ITC if the distribution of free

³ *Sonia Bhatia v. State of U.P.* (1981) 2 SCC 585.

⁴ For clarifications pertaining to the eligibility of ITC in the hands of the supplier in relation to various sales promotional schemes, see, Circular No 92/11/2019 GST, (MINISTRY OF FINANCE Mar. 7, 2019) available at- <https://cbic-gst.gov.in/pdf/circular-cgst-92.pdf>.

samples or gifts are within the purview of supply according to the conditions specified in Schedule 1 of the aforementioned Act.

Buy one get one free offer

This doesn't mean a single supply of free products, but rather a bundle of two or more individual supplies for which a single price is charged for the full supply. The best way to sum it up is as offering two things for the price of one.

Whether or not such a supply qualifies as a composite supply or a mixed supply will determine its taxability, and the rate of tax will be determined in accordance with Section 8's criteria. For inputs, input services, and capital goods used in conjunction with the supply of goods or services, or both, as part of such offers, suppliers shall have access to ITC.

Discounts, such as 'Buy more, save more' deals

Discounts offered by suppliers to customers (including staggered discounts under the "Buy more, save more" scheme and post supply/volume discounts established before or at the time of supply) shall be excluded from determining the value of supply if they satisfy the parameters set out in section 15(3), including the reversal of ITC by the recipient of the supply that is attributable to the discount based on document(s) issued by the supplier.

However, the supplier is eligible to claim the ITC on such reductions for such inputs, input services, and capital goods utilised in relation to the delivery of goods or services or both.

Secondary discounts

These are discounts that are not disclosed at the time of supply or that are offered after it has ended. Such discounts must not be disregarded when assessing the supply value. In this situation, there is no effect on the availability or otherwise of ITC in the hands of the provider.

V

LANDMARK JUDICIAL DECISIONS

*In Re: M/s Page Industries Limited*⁵

The Hon'ble AAAR, Karnataka It was decided that the promotional items and materials that the assessee gives away for free (or "Free of Cost") to their distributors and franchisees in order to market and promote their products can be regarded as "inputs" as defined in the Central Goods and Services Tax Act, 2017 (the "CGST Act") under Section 2(59). However, due to the restrictions of

⁵ Order No. KAR/AAAR/05/2021, dated April 16, 2021.

Sections 17(2) and 17(5)(h) of the CGST Act, the GST paid on the item cannot be claimed as an Input Tax Credit.

In Order No. KAR/AAAR/05/2021, dated April 16, 2021, the Honourable AAAR of Karnataka held as follows:

It should be noted that neither Schedule I of the CGST Act nor the definition of a taxable supply in Section 7 of the CGST Act apply to the appellant's free offering of promotional materials to franchisees and distributors. According to Section 2(78) of the CGST Act, the action of delivering the promotional products might be referred to as a "non-taxable supply." As a result, ITC will not be accessible under the terms of Section 17(2) of the CGST Act.

The court observed that there is a contractual obligation on the part of the appellant to provide their EBO/franchisees and distributors promotional materials to increase the sales of their products, and that the same will continue to be used by the EBO and distributors as long as the agreement is in effect. Examples of these promotional items include gondola racks, wall shelves and panels, POP items, etc. As a result, the Appellant retains ownership of the promotional items and does not transfer that ownership to the EBO or the distributor. Additionally, because these non-distributable goods are never classified as capital expenditures in the Appellant's books of accounts, they cannot be considered "capital goods" but rather "inputs" that are used during the course or furtherance of business.

Furthermore, it was noted that promotional items like carry bags, calendars, diaries, pens, and other items with brand names embossed or engraved that are given away to customers free of charge (FOC) by EBOs, distributors, and retailers take on the status of gifts because they are given voluntarily and without any contractual obligation or consideration, and are therefore ineligible for ITC even if they are used in the course of business.

The court had set aside the AAR, Karnataka decision from December 15, 2020.

As a result, the goods purchased with GST that are given away are not eligible for ITC under Section 17(5)(h) of the CGST Act, even if they are used in the course or advancement of business. The promotional products/materials and marketing items used by the appellant in promoting their brand and marketing their products can be considered as "inputs" as defined in Section 2(59) of the CGST Act. As a result, the promotional products supplied as giveaways are not eligible for the ITC since they are prohibited under the requirements of Sections 17(2) and 17(5)(h) of the GST Act.

The case is summarised as:

Particulars	Situations	Precedence
ITC on "Distributable Items," such as a carry bag, employee uniforms, gifts for brand operators, etc.	A. Transfer of Goods to Franchisees	Franchisees are related parties of the applicant. Sending a distributable good without receiving payment constitutes a supply, and as a result, is subject to GST. The applicant will be able to submit a claim for the appropriate ITC.
	B. Transfer of goods to other retailers	Not regarded as a supplier. Distributable things transferred are to be regarded as gifts. ITC is not allowed.
B. ITC on "Non-Distributable Items", e.g., Hoardings, Display Boards etc.		Items that cannot be distributed are categorised as "Capital Goods" rather than "Inputs". The applicant may claim ITC on the same. However, in accordance with Rule 43 of the CGST Rules, ITC must be reversed if the same are destroyed or written off.

Other than the above Case various Advance Ruling Authorities have issued decisions on this topic, which are listed below for your convenience: -

Surfa Coats (India) Pvt. Ltd. Case⁶

To urge dealers to elevate their products, the applicant creates incentive programmes based on market conditions. Painters Programmes, Dealer Incentive Schemes, Gold Schemes, Foreign and Local Trip Schemes, and so on

⁶ 2019 SCC OnLine Kar AAR-GST 58.

are some of the schemes available. The incentives are granted according to the terms of each scheme's rules. Incentives under the programmes are generally in the form of TVs, refrigerators, washing machines, mixers, grinders, watches, gold coins, and so on, which are distributed to painters and sellers. As an incentive, the applicant purchases the items listed above for free distribution. The applicant requested a judgement on the GST implications of such incentives.

According to the AR authority, ITC is not admissible on any items distributed as a gift or free sample, whether or not in the conduct or furtherance of business, under section 17(5)(h) of the CGST Act, 2017. As a result, the applicant is not eligible for ITC on such products. Furthermore, complimentary international excursions granted to dealers do not constitute "Supply" under section 7(a)(1) of the CGST Act and Schedule-I to the CGST Act. As a result, the applicant cannot claim the ITC on the input services purchased in order to provide free travels.

Sanofi India Limited (AAR- Maharashtra)⁷

As promotional products are provided to clients independent of any contractual obligations and are given voluntarily on the grounds that customers have met certain requirements, ITC is not available on GST paid on expenses incurred towards promotional schemes (such as foreign trip or gifts for achieving targeted sales) and goods given as brand reminders. As a result, ITC will be prohibited in accordance with the guidelines in section 17(5) of the CGST Act.

Biostadt India Limited GST-ARA-72/2018-19/B-165 Mumbai dated 20.12.2018

The applicant offers gold coins to consumers as part of a sales promotion programme. The applicant asserts that they and their customers have engaged into a written agreement whereby they must meet a certain sales goal in order to receive gold coins. As a result, the distribution of gold coins cannot be considered a "gift" since a "gift" is an act that is done voluntarily and without expecting payment.

The Advance Ruling Authority noted that the plan in question lacks a contractual framework. A contractual relationship indicates that the client must also consent in writing to the applicant's proposed plan. We discover that gold coins are supplied to consumers willingly and not as a result of any contractual duty, provided that the customer meets specified requirements. As a result, the applicant's distribution of gold coins is nothing more than a gift. As a result, the transaction is covered by the Act's Section 17(5) restrictions. ITC

⁷ 2019 SCC OnLine Mah AAAR-GST 58.

will thus be disallowed with regards to these gold coins.

VI

CRITICAL EXAMINATION OF PROBLEMS AND SUGGESTIONS

What type of gifts are offered to advance or conduct business? Can ITC be used when gifts are given only for publicity or sales promotion?

Gifts of every description can be given in the course of doing or advancing business. Nearly all of them are carried out as part of business operations, and some of them are customary.

It is possible to give unbranded gifts, branded or personalised gifts that are customised in the form of promotional items, Diwali gifts or gifts for festive occasions, target-based prizes in place of discounts or incentives, etc.

During the course of business refers to customary business activities such as trading, manufacturing, etc. It alludes to actions that are directly related to business and necessary for operation, such as the purchase of capital equipment and raw materials. The act of advancing or promoting a business for its continued growth and profitability, on the other hand, is referred to as furthering of business.

In this case, it is obvious that Diwali gifts and other customary and holiday presents are given to people connected to a business and are seen as serving that function. These gifts are often given to uphold positive business relations in order to enhance company operations. Gifts given to increase sales, achieve objectives, or offer incentives are regarded as being given "in the course of business" and aren't always considered to be "gifts" but rather incentives for keeping to contractual obligations.

No goods may be eligible for an input tax credit under Section 17(5) if it is provided as a gift, whether or not it was given as part of a commercial transaction. Or, to put it another way, the aforementioned gifts must be subject to GST when given away or disposed of, and an ITC will also be possible, if it is judged that they have an additional commercial consideration. This is because any transaction that has a commercial value linked to it no longer qualifies as a gift. Nonetheless, in that case, the value must be established objectively and not speculatively, in line with Section 15 read with the Valuation Rules.

Since nothing in this world comes for free, some gifts may have additional commercial consideration even when it isn't immediately obvious or monetary. What occurs in this situation?

A "gift" is typically an inducement, or a strategy for swaying the recipient. In

general, if the consideration is not wholly monetary, the transaction is subject to valuation rules since the act of inducing cannot be excluded from the definition of a supplier. The Valuation Rules stipulate that in this situation, the transaction must be valued at the subject products' open market value (given by way of gift). It is simple to calculate the "Open Market Value" of often bought commodities as the identical products' buying price. In this scenario, the input tax credit involved must match the output GST owed for making the specified gift, made in the course or furtherance of business, if it is deemed to be a supply to be valued at the cost of purchase. Therefore, the goods that will be distributed as gifts will have the same output and input Tax, and the act of not paying GST on the giving of the present shall be compensated by forgoing the ITC on the purchase of the concerned gifts.

On the cost of the aforementioned presents, enter a tax credit. Receiving ITC on the purchase of the aforementioned products and paying the same amount as GST when gifting the goods, or forsaking both, would be equal. Similar ideas also underlie the Central Excise law's definition of input eliminated as such.

Two fundamental requirements, Sections 16 and 17, must be met in order to qualify for ITC. According to Section 16, a taxpayer is allowed to deduct the input tax paid on any supplies of goods or services made to him that he uses to further his business. Thus, ITC for non-business reasons is prohibited by Section 16 itself. This clearly illustrates the legislative purpose that only business gifts, which have already been prohibited, are left to be covered by Subsection (5) of Section 17. It is not whether the credit is being blocked under Section 17(5) for business purposes or not; rather, it is whether the credit is being blocked for consideration. If so, whether or not it is specifically necessary to quantify the consideration and pay GST on it.

The input tax credit with respect to the "goods" disposed of by way of gift shall not be permitted, according to clause (b) of Section 17(5) of the CGST Act 2017. "Every sort of moveable property.....which are agreed to be served before supply or under a contract of supply" is the definition of goods as stated in Section 2 (52). As a result, in order for a commodity to qualify as "goods" under this law, it must be utilised for the purpose of supply, and a transaction must involve some sort of remuneration in order to be considered a supply; otherwise, it must be listed in Schedule I of the Act. Except for gifts given to employees, Schedule I makes no mention of or takes any regard for gifts. Can it be argued that these Diwali presents no longer fall under the definition of "goods" as such from the standpoint of the registered person who makes the purchase?

For the provider who provides such presents to the buyer who will give the gift it further, a "gift" is defined as a recurring supply of products. It is crucial

that tax be imposed on "goods" supplied by a supplier to a recipient. There is no restriction that these things must likewise be considered "goods" for the receiver to be kept as "goods" for him separately. The inbound supply is the action that brings ITC to the recipient, regardless of eligibility or reversibility. In light of this, it may be declared with certainty that Diwali presents satisfy the requirements of Sections 2(52) and 16 as well, and therefore cannot be argued to be exempt from being subject to the restrictions of Section 17(5)(b) by means of this fabrication of the definition of "goods."

Why shouldn't ITC on gifts be allowed when it is sufficiently obvious that they are given in the course or furtherance of business and the requirements under Sections 2 (52) and 16 are also met?

When no tax is being paid on the disposal of the products, ITC on items given away or disposed of as "gifts" shouldn't be offered. Because Section 17(5) begins with a non obstante phrase, even if Section 16 (1) permits, Section 17(5) shall block, the logic of completing Section 16 (1) is inapplicable in order to obtain this credit lawfully.

In addition, Section 17(5) is a specific provision according to the well-established rule that specific provisions take precedence over general provisions. TMI 77 (1960) - SUPREME COURT, it was decided that: "Para 9.... We reach the same outcome by using another well-known rule of construction that general provisions yield to specific ones." This philosophy has consistently been upheld.

In the case of *LIC v. D.J. Bahadur*⁸, Supreme Court adhered to this standard established by British Courts and Books on Legal Interpretation. The legal maxim *generalia specialibus non derogant* is often used when an implicit repeal argument is made and there is a disagreement between a special and a general statute. When the question of whether the LIC Act is a special or general statute was raised before the Court, the Court stated that the LIC Act was an example where this was the case. The law is correctly stated by Craies. The third edition of Maxwell, which is "*generalia specialibus non derogant*" - that is, "general provisions will not abrogate special provisions," will have all of the cases on the topic compiled in one place.

When a statute contains two provisions, one of which is specialised and the other general, similar application results. In the event of a conflict between Section 16 and Section 17(5), Section 17(5) should, in our opinion, take precedence.

While Section 17(5) is specific, Section 16 is a general regulation. In plain

⁸ 1980 (11) TMI 157.

English, Section 17(5) takes precedence over Section 16(1). Additionally, even though clause 17(5) is *non-obstante*, ITC cannot be claimed until the conditions of section 16 have been met and, even then, only if it is not affected by clause 17(5). In other words, ITC would not be accessible if something meets the requirements for ITC under Section 16 but is prohibited from receiving ITC under Section 17.

In the same way, in the event of a conflict between Schedule I and Section 17(5) (b), Schedule I should, in my opinion, take precedence.

If so, were the sweets and drinks purchased for Diwali distribution to staff, workers, customers, and associates?

Section 17(5)(b)(i) expressly restricts the input tax credit for food and beverages, while Section 17(5)(h) specifically restricts or outlaws the credit for gifts. Therefore, any candy or drinks given as gifts to customers, coworkers, employees, or other associates will not qualify for an input tax credit, regardless of whether they are considered "food or beverages" or "gifts" (however, when handed to employees, the financial cap under Schedule I will intervene)

The reversal or non-availment of ITC on gifts will be a tough task in return filing; it will be necessary to identify which things are given as presents and under whose bill the same were acquired and make the necessary reversal. How should the invoicing be handled for these gifts? How might we ease this hardship?

It is indisputable that, because a present is given without expectation of payment, the person who buys the item and gives it away is also the person who will use it, and the ITC is only applicable to B2B supply. It makes sense to purchase gifts as B2C inward supplies as ITC cannot be used for B2C supplies in order to save the receiver the hassle of reconciliation, matching, and reversal on such things. B2C purchases are not eligible for ITC, but under the regulations for income tax, the entire cost of the purchase, including the GST component, may be written off.

To lessen/eliminate the difficulty of reversal and reconciliation, the registered person should implement a policy requiring that any commodities purchased as presents be obtained as Business to Consumer supplies from a registered person in order to avoid the inconvenience of these processes. This is crucial since gifts are freely given and do not impose any legal obligations, even when provided in the conduct or advancement of business.

What about gifts given as offer packs, like Y item free against purchase of 20 pieces Z item, Buy 1 Get 1 etc.

The term "Transaction Value" is mentioned in Section 15 of the CGST Act. Free gifts and promotional offers always come with an additional commercial aspect that makes it difficult to determine whether to reverse an ITC or pay GST on the outward delivery, or both.

In the normal course of business, the aforementioned are gifts or free supplies. These items qualify as "gifts" and are not eligible for ITC if payment is not made in full for them. ITC will be given on these products if it is proved that they were delivered in lieu of a discount which complies with Section 15(3), i.e., the discount (whether in full or in part) appears and is documented as a contractual obligation under specific invoice(s). Once the agreement under which it originates has been established on record, it may be beneficial to include such products under the relevant invoice or credit note. As soon as an obligation is attached, the product ceases to be a "gift," and in such a situation, Section 17(5) cannot be used to deny ITC.

But in our opinion, seasonal presents and traditional gifts will never achieve this status.

Can promotional materials or company-branded goods, such as a toaster, be considered sales promotion expenses rather than gifts if they are purchased and delivered as gifts to wholesalers by the distributor company? If so, ITC may be available.

However, it is important to first realise that incurring an expense is nothing more than consuming something. The objective of this type of gifting is to increase business exposure rather than to popularise the logo per se. It counts as an input when the cost is directly tied to the supply in the process of conducting business. No consumer requests a requirement that corporate logos be printed on promotional materials when the customer is receiving its goods. It cannot be stated that such things are a component in the course of supply because the supplier wills to provide them and delivers them as presents because no client would choose to pay for them freely.

The aforementioned justifications highlight two crucial elements that must be included in a transaction in order to advance business:

Is the activity carried out on a regular basis in accordance with good and accepted business principles?

Is the primary focus of the activity the creation of a taxable supply for payment or profit?

In the above transaction, both are missing and ITC cannot be availed even by virtue of Section 16 in such a case, whether or not these publicity materials are considered as gifts.

Why is Clause 17(5)(b), which asserts that nothing in the corporate world is free, so strict? Are the objectives of Section 17(5)(h) in any way related to the earlier rules made under Central Excise law or the Cenvat Credit Rules?

The main goal of Section 17(5)(b) appears to be to prevent people from (a) selling items for cash and avoiding paying taxes by passing them off as gifts (b) giving advantages or exchanging consideration in kind in place of money or goods while passing it off as a gift to avoid valuation and subsequently paying taxes (c) giving employees incentives or advantages as business expenses that are not explicitly accounted for as being offered to them as payment for their services and do not, therefore, form a component of their legal compensation.

The idea is that, unless specifically exempted, all items should be subject to indirect tax up until the point at which they are consumed. The tax on such things will be somewhat avoided if presents given to business partners or workers are not taxed when they are disposed of and ITC is also permitted on them.

Even the former Central Excise law prohibited the use of Cenvat credits for goods that were bought and distributed as presents or free samples. The former Rule 3(5) stated that the producer of the finished goods or the supplier of output services, as applicable, shall pay an amount equal to the credit obtained in respect of such inputs or capital goods, and that such removal shall be done under the cover of an invoice in accordance with Rule 9. This removal shall be made from the factory or premises of the provider of output service. The duty payable on these items was held to be an amount equal to the CENVAT credit taken inputs, and the Cenvat Credit received on account of purchase of such goods could be used for payment of the duty on such goods when withdrawn as such or after being partially processed. A combined harmonious reading of Sections 15, 16, and 17(5) suggests that they all express the same intention.

What about presents for workers? Do they vary in any way from presents given to others? How should they be handled in terms of GST?

There are two competing entries for "gifts" to employees; in Schedule I and Schedule III respectively. The caveat to Entry 2 of Schedule implies that presents given by an employer to an employee in excess of Rs 50,000 in a fiscal year are to be considered "supplies."

While Entry I of Schedule III indicates that the services provided by an employee while performing his duties or in connection with his duties are not a "supply," When both of these items are taken into consideration, it would seem that anything supplied to an employee in the regular course of business constitutes payment for services rendered and is therefore outside the purview

of supply.

In accordance with Entry 2 of Schedule I, any gifts given to employees that total more than Rs 50,000 in a calendar year must be paid in GST. The Schedule I refers to supply-only transactions that are not kept for consideration. This indicates that anything provided for a consideration, such as service provided in accordance with employment conditions of service, is dealt under Schedule III and cannot be covered at all under Schedule I. Only transactions that are given willingly and without consideration, or those are not covered by a contract in the case of employees, will be included in Schedule I. Since they are not exempt under Schedule III, a restricted exemption of *Rs 50,000 per year is granted to each employee under Schedule.

Any present given to an employee that is not specified in his offer letter or other specific form of compensation or incentive will be considered a "gift." Given that they are related parties, the value must be established in accordance with the guidelines mentioned above if the present to an employee exceeds Rs 50,000 in a given year. Does this imply that all gifts that fall under Entry 2 of Schedule I are subject to double taxation?

Since issues with double taxation have been brought up, the following important issues merit discussion:

Under Schedule I, any present given to an employee for more than Rs 50,000 in a single year is considered a supply, and Section 17(5) mentions not using credit for such gifts. First off, does the exemption of Rs 50,000 under Schedule allow one to claim an ITC on such presents when they are purchased? If not, not granting an ITC would entail charging GST on such products when they are given away as gifts using a presumed fiction of valuation.

In a similar vein, donations exceeding Rs 50,000 must either renounce ITC under Section 17(5)(b) or require GST to be paid again on the extra amount. If so, exactly how will this value be done?

Although it would seem that there are double taxes in this situation, doing so goes against the principle of the GST, making it difficult to believe that this was the provisions' intended outcome. As was already said, according to the valuation standards, the value of outward supply in such circumstances is open market value, or the same as the purchase cost. The GST mentioned above is simply the payment of GST on the aforementioned commodities that were sold without receiving any money. This ought to work. Additionally, this makes it possible to claim ITC on presents given to employees up to the value of Rs 50,000 each year.

Neither the aforementioned nor the reversal of ITC (as a buyer of such products or in the context of a B2C transaction as previously indicated) equates to paying

GST on any transaction that is regarded to be an outward supply. Payment of duty was seen as equal to the reversal of Central Value Added Tax credit under earlier central excise laws as well. No further payment of GST should be due on transactions without consideration in the case of GST as well, if IC is foregone.

L) Gifts to any other relatives are always considered supplies under Schedule I because they are always given freely. If presents are given to people who are not related to you, you are not making a supply and are therefore not subject to GST. Section 17(5)(b) prohibits or bans the ITC in both circumstances. So how are they distinct from one another?

The overall effect seems to be the same whether presents are given to employees for more than or less than the monetary limit of Rs 50,000 because double taxes cannot be justified.

Due to the impact of the Valuation Rules, charging a minimal sum for presents to employees or other associated parties does not assist in preventing double taxation. Gifts to employees that aren't specified in the terms of employment or that aren't required by contract can't be considered remuneration for their services unless they are explicitly stated to be such. In that situation, they will even become subject to the employee's employer's TDS requirements under income tax legislation.

The Entry No. 2 of the Schedule with regard to the employee and all other associated persons is extremely ambiguous and requires prompt revision by the law makers with serious consideration and clear resolution.