

WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Sarthak Saxena, Joint Commissioner, CGST & CX Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	M/s. Vikash Agritech Food Private Limited
Address	191, 3 rd Floor, C.R. Avenue, West Bengal, Kol-700007
GSTIN	19AADCV6254F1Z5
Case Number	02 of 2023
ARN	AD191222012246I
Date of application	January 03, 2023
Order number and date	04/WBAAR/2023 dated 19/05/2023
Applicant's representative heard	Mr. Rajkumar Banerjee, Advocate Ms. Payel Agarwal, CA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be engaged in the business of selling flour (*atta*) and providing service of job work in the nature of crushing food grains supplied and owned by Food & Supplies Department, Government of West Bengal.

1.3 The applicant submits that he has entered into an agreement with the District Controller of Food and Supplies, Kolkata, Government of West Bengal for supply of fortified Wholemeal Atta. According to the said agreement, the State Govt. (Food & Supplies Department) sends the whole, unpolished food grain to the applicant for crushing and processing it into flour. The applicant returns the flour(*atta*) packed in the manner as the State Govt. requires by fortifying the crushed grain with the vitamin which is then distributed through the Public Distribution System (PDS) by the State Govt. (Foods & Supplies Department).

1.4 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

(i) Whether the instant composite supply of service by way of milling of food grains into flour to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?

(ii) What shall be rate of GST on such milling, if it does not fall under entry No. 3A?

1.5 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (b) and (e) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the revenue has raised no objection to the admission of the application.

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

Fact of the case as submitted by the applicant along with interpretation of law made by him is reproduced herein under:

2.1 The Indian Food Security System was established to distribute food and non-food items to India's poor at subsidized rates. Major commodities are distributed including staple food grain, sugar and essential things like kerosene through a network of fair price shops distribution and is managed by State Government through the ration shops. Basic objective of Public Distribution System is to serve the below poverty line family. The Essential Commodities Act, 1955 was legislated to provide in the interest of general public control of production, supply and distribution and trade and commerce in certain commodities. Control, Production, supply, distribution etc. of essential commodity is controlled as per the provision

of section 3 of the said Act 1955. The West Bengal Public Distribution System (Maintenance and Control) Order, 2013 has been issued in exercise of power conferred by section 3 of the Essential Commodities Act 1955 and the same extends to the whole of West Bengal except the area where the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 is in force with Government of India Ministry of Consumer Affairs.

2.2 The West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 has been issued in exercise of the power conferred by Section 3 of the Essential Commodities Act 1955 read with the Ministry of Consumer Affairs, Food and Public Distribution Department Order No. G.S.R. 630(E) dated 31.08.2001. It extends to the urban area of West Bengal.

2.3 The West Bengal Public Distribution System (Empanelment of Flour Mill and Milling of Fortified Atta/Wholemeal Atta) guidelines 2017 has been framed in pursuance of clause 36 and 37 of the West Bengal Public Distribution system (Maintenance and Control) Order 2013 and class 33 and 34 of West Bengal Urban Public Distribution System and is in control 2013. Agreement herein means agreement made between the state government and owners of flour mills thereof in accordance with the provision of the said Guidelines, 2017, as defined in Para 2(1)(a) of the said Guidelines. Para 3 deals with empanelment of flour mills whereas para 6 deals with renewal of empanelment. Paragraph 4(2) of the said guideline, 2017 provides that the empanelled flour mill shall not indulge in private milling for commercial purpose except with the prior consent of the state Government. Para 20 of the said Guideline reads as follows:

20. Maintenance of Register and furnishing returns –

- (1) *A separate register shall be maintained by the owner of flour mill to keep records of wheat received, milled and fortified atta/whole meal atta delivered by you.*
- (2) *Every owner of flour mill shall furnish fortnightly return to the district controller (food and supplies) containing as abstract of the above account and a monthly return which must reach the District Controller, Food and Supply as per format as may be provided by District Controller, Food and Supply or by the Director, District Distribution of Procurement & Supply (DDP&S).*

2.4 The aforesaid activity of Public Distribution System is in relation to the function of safe guarding the interest of weaker section of the society, entrusted to a municipality under Article 243W read with twelfth schedule of the Constitution of India as because para 2(f) of the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 is relevant which speaks as follows:

2(f) "Below poverty line family" means those family who have been identifies as such by the concerned authority under the Government of West Bengal and to whom BPL Ration Cards have been issued for distribution of public Distribution Commodities under BPL Scheme along with other specified items of daily use under Public Distribution System.

2.5 The applicant has given a brief account of the job work done in the nature of crushing food grains supplied and owned by Food & Supplies Department, Govt. of West Bengal which is enumerated as below: -

- (a) The State Govt. (Food & Supplies Department) sends the whole, unpolished food grain to the applicant for crushing and processing into flour.
- (b) The applicant returns the flour packed in the manner as the State Govt. requires by fortifying the crushed grain with the vitamin. The packing material is supplied by the applicant.
- (c) The flour is distributed through the Public Distribution System (PDS) by the State Govt. (Foods & Supplies Department).
- (d) By crushing 100 kgs of wheat, 95 kgs of flour and by-product in the form of 4 Kgs of Bran and 1 kg of refractor is generated.
- (e) The cash consideration paid for the senders of crushing is Rs.136.48/-.
- (f) Further, the applicant also gets non cash consideration in the form of being allowed to retain 4 Kgs of Bran and 1 kg of refractor which is sold in the open market realizing Rs.81. Further Rs.43/- is realized by selling gunny bags which is used by the State Government for sending gunny bags to the applicant.
- (g) Therefore, total non-cash consideration is Rs.124/-.
- (h) Details of cash and non-cash consideration is as below: -

Flour Millers to be paid for crushing of 100 kg of Wheat		Cost for of 95 Kg Atta (in Rs.)
A	Crushing Charges	90.78
B	Fortification, Costs	10
C	Packing Charges	50
D	Transportation & Handling Charges	28.7
E	Consideration from sale of Bran (4" Rs.20/Kg (Non-Cash)	80
F	Consideration from sale of Refractors (1" Rs.1/kg) (Non-Cash)	1
G	Total (A+ B+C+D+E+F)	260.48
H	Less: Non-Cash Consideration	
I	Less: Cost of 2 Gunny Bags	-43
J	Less: receipt from Sale of Bran and Refractor	-81
K	Net Total (Cash Consideration)	136.48

2.6 The applicant states that vide Notification No. 2/2018-Central Tax (Rate) dated 25.01.2018, Government of India, Ministry of Finance (Department of Revenue), New Delhi, in exercise of powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017, on being satisfied that it is necessary in the public interest so to do so, on the recommendation of the Council, while making further amendments in the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, inserted serial number 3A which states as hereunder:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

2.7 The applicant has submitted a copy of the letter issued under Memo No. 2979(3)-FS/Sect./Food/4P-02/2016 dated 8th December 2020 on the subject matter of 'Applicability of GST on the Flour Mills for crushing of Wheat into Fortified Atta for PDS'. In the said letter, the Special Secretary to the Govt. of West Bengal, Food and Supplies Department has observed as follows:

'In view of above, it appears that GST is not applicable on the Flour Mills for crushing of wheat into fortified atta under the Govt. Scheme for Public Distribution System.'

2.8 The applicant has contended that services in the nature of crushing food grains supplied and owned by Food & Supplies Department, Govt. of West Bengal is exempt from the levy of GST vide sl. no. 3A of the notification No. 12/2017- CT (R) dated 28.06.2017.

2.9 The applicant has argued further that the flour is packed in the packing material procured by him and thus he is making a bundled supply of the services of crushing of the grains along with supply of packing materials. They are supplied in conjunction with each other in the ordinary course of business as food grain cannot be transported without proper packing. It is, therefore, a composite supply of goods and services where service of crushing food grains is the principal supply and providing packing materials is ancillary to it.

2.10 The primary condition to be covered under the said entry of exempt supply reads as – "Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply ...".

Accordingly, it is submitted by the applicant that in the instant composite supply,

- Value of Supply of Goods = Fortification Charges + Packing Charges = Rs. (10 + 50) = Rs. 60
- Value of Composite Supply = Rs. 260.48

Therefore, value of supply of goods vis-à-vis value of composite supply is 23.03% which is much lesser than 25% as specified in the sl. no. 3A of the notification No. 12/2017- CT (R) dated 28.06.2017.

2.11 Distribution through PDS is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. It is an activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

2.12 The Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi vide its recent Circular No. 153/09/2021-GST dated 17.06.2021 has further clarified in the matter of GST applicability on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS, wherein it has been clarified as hereunder:

- *Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.*
- *In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.*

2.13 On the basis of the above-mentioned facts and the provisions of law, the applicant has submitted that the instant composite supply of service by way of milling of food grains into flour to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Alternatively, even if it is assumed without accepting that the aforesaid exemption is not available to the applicants, the services by way of job work in relation to all food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) is taxable at the rate of 5% (CGST + SGST) vide Notification No. 11/2017- Central Tax (Rate).

3. Submission of the Revenue

The officer concerned from the revenue has expressed the following views in this regard.

3.1 The CBIC vide Circular No. 153/09/2021-GST has clarified that supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%. The activity mentioned by the applicant in the application covered in the above circular. Accordingly, the applicant appears to be not eligible for the exemption under above notification.

3.2 In respect of the applicability 5% rate of tax under Notification No. 11/2017-Central Tax (Rate), the activity mentioned by the applicant appears to not fall under Sl. No. 26(i) of Notification No. 11/2017-Central Tax (Rate). Hence, 5% rate of tax is not applicable in this case.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representatives of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue.

4.2 Admittedly, the applicant has entered into an agreement with the District Controller of Food and Supplies, Government of West Bengal for supply of fortified atta upon crushing and processing of wheat provided by the State Government. The issue involved in the instant case, as we find, is to determine whether the instant supply shall get covered under entry serial no. 3A of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 or not which is required to be analyzed considering the following aspects:

- (i) whether the supply made by the applicant can be regarded as composite supply of goods and services;
- (ii) if the supply qualifies as composite supply, whether the same is made by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution;
- (iii) if the answers of (i) and (ii) are found to be affirmative, whether the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply.

4.3 Clause (30) of section 2 of the GST Act defines 'composite supply' as under:

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

4.4 The applicant, according to the agreement as produced, has been selected for empanelment for crushing of wheat into wholemeal atta and fortify it by premixing of micro-nutrients containing Iron, Folic acid and Vitamin to a specific percentage. The agreement further requires the applicant to pack the crushed stock of wholemeal atta after fortification into properly labeled poly-packs having thickness of 40 microns or above. It, therefore, appears that the activities undertaken by the applicant for milling of wheat into wheat flour, along with fortification and supplied upon packing of the same qualify the definition of 'composite supply' under clause (30) of section 2 of the GST Act where the supply of services by way of milling is the principal supply.

4.5 Now we take the issue to decide whether this composite supply is made in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

4.6 The agreement between the applicant and the State Government for supply of fortified Wholemeal Atta/Atta is found to be executed in terms of G.O. No. 2834-F.S. dated 6th September, 2017. The said Notification provides guidelines for the procedure of empanelment of flour mills/ attachakki to convert wheat into fortified atta/wholemeal atta in pursuance of clauses 36 and 37 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 and clauses 33 and 34 of the West Bengal Urban Public Distribution System (Maintenance & Control) Order, 2013. In this context, we refer to Para 3.1 of the Circular No. 153/09/2021-GST dated 17.06.2021 where it is stated that 'Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution.' Hence, the instant composite supply made by the applicant is found to be in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

4.7 The issue now left with us is to ascertain whether the value of supply of goods in this case exceeds 25 percent of the total value of the supply or not. According to the applicant, the value of supply of services in respect of milling of 100 kilograms wheat should be Rs.260.48 though the applicant receives consideration in cash only to the tune of Rs.136.48 against such supply. The applicant has contended that the value of supply shall include consideration not received in money but otherwise in the form of cost of gunny bags retained by him and also the receipt from sale of Bran and Refractor. Para 6(1) of the agreement speaks that 'The out-turn ratio of Atta will be minimum of 95% per quintal of wheat allowing refraction of 1% for cleaning and 4% for debranning to the maximum'.

4.8 The applicant has submitted that he gets non-cash consideration in the form of being allowed to retain 4 kgs of bran and 1 kg of refractor which is sold in the open market realizing Rs. 81. Further Rs.43/- is realized by selling gunny bags which is used by the State Government for sending gunny bags to the applicant.

4.9 Thus, the value of supply for providing milling services to convert 100 kgs of wheat supplied by the State Government into 95 kg of fortified atta, according to the applicant, comes at Rs.136.48 + Rs.124.00 [Cost of 02 gunny bags : Rs.43/- + Receipt from sale of bran and refractors : Rs.81/-] = Rs.260.48. We find that the value of goods involved in the instant supply stands at Rs.60/- against total value of supply of Rs. 260.48, thereby the value of goods involved in the instant composite supply stands at 23.03% of the total value of supply i.e., it does not exceed 25% of the value of the composite supply.

4.10 A composite supply shall qualify for exemption under entry serial no. 3A of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upon fulfillment of following criteria:

- i) The supply has to be provided to Government/Local Authority/Governmental authority/Government Entity;
- ii) The supply has to be by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution;
- iii) The value of supply of goods in the said composite supply shall not exceed 25% of the value of the said composite supply.

4.11 In Para 3.2 of the Circular No. 153/09/2021-GST dated 17.06.2021 [CBIC-190354/36/2021-TRU Section - CBEC], it has been clarified that "In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry no. 26, and thus said supply to such person is also entitled for 5% rate."

4.12 In this context, the order of the West Bengal Appellate Authority for Advance Ruling in the case of M/s Shiv Flour Mill, [Appeal Case No. 02/WBAAAR/APPEAL/2022] may be referred to wherein the Appellate Authority has observed as follows:

"The WBAAR failed to appreciate that the valuation of the composite supply is the agreed upon price between the flour millers and the Food & Supplies Department. This agreed upon price includes the notional value of Rs.124/- of two gunny bags and 5 kg by-products (1 kg refractor and 5 kg bran) which are retained by the miller, irrespective of actual disposal price of those gunny bags and by-products in future. The supply value of milling of wheat in the instant case cannot be dependent on actual receipts by the miller in future from third parties in disposal of the retained goods. It is clear from Memo No. 2979(3)-FS/Sect./Food/4P-02/2016 dated 08.12.2020 read with Memo No. 569(3)-FS/Sect./Food/4P-02/2016/2021 dated 18.02.2022 that the total supply price is Rs.260.48 for milling services to produce 95 kg fortified atta from 100 kg wheat. The value of goods in the composite supply is not more

than Rs.60/- being cost of elements for fortification and packing materials. So the percentage of value of goods in the composite supply is established to be lesser than 25% of the total supply value.”

4.13 We, therefore, hold that the instant supply of services by way of milling of food grains into flour (atta) to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under serial no. 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, since the supply satisfies all the conditions specified in the said entry. As a result, we are unable to accept the views expressed by the officer concerned from the revenue.

In view of the above discussions, we rule as under:

RULING

- (1) The instant composite supply of services by way of milling of food grains into flour (atta) to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under serial no. 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, since the value of goods involved in such composite supply does not exceed 25% of the value of supply.
- (2) In case the value of goods involved in such composite supply exceeds 25% of the value of supply, the supply shall attract tax @ 5% (CGST @ 2.5% + WBGST @ 2.5%) vide entry serial No. 26 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding State Tax Notification No. 1135-FT dated 28.06.2017], as amended.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SARTHAK SAXENA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date:19.05.2023

To,

M/s. Vikash Agritech Food Private Limited
191, 3rd Floor, C.R. Avenue, Kolkata,
West Bengal, Pincode-700007

Copy to:

- (1) Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) Deputy/ Assistant Commissioner, CGST & CX, Shyambazar Division, Kolkata North Commissionerate, 180, Shantipally, R.B. Connector, Kolkata-7000107
- (4) Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B. Connector, Kolkata-7000107
- (5) Office Folder