

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:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr 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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	BERHAMPUR WAREHOUSING PRIVATE LIMITED
Address	MANKARA, BALARAMPORE, BALARAMPUR, MURSHIDABAD, West Bengal, Pincode-742165
GSTIN	19AAECB2947C1ZU
Case Number	WBAAR 09 of 2022
ARN	AD190422012741F
Date of application	May 06, 2022
Jurisdictional Authority (State)	Baharampur Charge, Baharampur Circle
Jurisdictional Authority (Central)	Berhampore Division, Bolpur Commissionerate
Order number and date	07/WBAAR/2022-23 dated 18.08.2022
Applicant's representative heard	Mr. Manish Raj Dhandharia, FCA

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 a flour miller, engaged in providing services of crushing wheat provided by the State Government, into fortified atta which in turn is supplied by the State Government through Public Distribution System. The ownership of wheat or atta is never transferred to the Applicant.

1.3 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) What is the value of supply of services provided by the applicant to the State Government?

(ii) What is the rate of tax applicable on the value of supply? What components and at what value are to be included in calculation of the % of value of goods in the total value of composite supply for the purpose of Notification No. 2/2018- Central Tax (Rate)?

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

1.5 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.

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

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

The submission of the applicant is that:

2.1 It has entered into a contract with the Governor of the State of West Bengal represented by the District Controller of Food & Supplies (hereinafter referred to as the State Government) for conversion of wheat provided by the State Government and owned by the State Government, at all times, into atta/ fortified atta, for distribution by the State Government through Public Distribution System (for brevity, PDS), as entrusted under the Eleventh Schedule of the Constitution of India.

2.2 It has been selected for empanelment for crushing of wheat meal atta and fortify it by premixing of micro nutrients containing (i) Vitamin A-500 µg RE- 750 µg RE, (ii) Vitamin B12- 0.75 µg- 1.25 µg, (iii) Iron: Ferrous(II) Citrate:28mg-42.5mg or Sodium Iron(III) EDTA: 14 mg-21.5 mg, (iv) Folic Acid- 75µg- 125µg per kg in 1 Kg poly pouch/packet(1 kg wheat ≅ 950gm fortified atta)(having thickness of poly pouch not less than 50 microns).

2.3 Under the aforesaid contract, it shall obtain stock of wheat from the State Government. The ownership of wheat remains with the State Government and the applicant is required to convert the wheat into atta by way of crushing and mixing other ingredients as stated earlier.

2.4 The contract specifies that the outturn 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. The applicant, as per the contract, will retain 1 kg refraction and 4 kg bran against conversion of 100 kg wheat. The applicant will further retain 2 gunny bags in which 100 kgs of wheat is supplied to him.

2.5 The contract stipulates that it shall pack the crushed stock of whole wheat atta after fortification into the poly pouches of 1 kilogram each in properly labelled poly-packs having thickness of 50 microns and or above and it will deliver the stock to the M.R. Distributors as nominated by the State Government for distribution to the consumers, immediately after the process of crushing.

2.6 The applicant does not gain ownership of either wheat or atta in the entire process of crushing it. This is substantiated by Clause 10(4) of the contract which states that the applicant shall under no circumstances sell the stock of atta in the open market. The atta is distributed only through PDS.

2.7 During the process of conversion of wheat into atta, two types of wastes are generated, namely bran and refraction. The bran and refraction so generated will subsequently be retained by it and sold in the open market at the prevailing market rates which is generally around Rs 20/- per kg for bran and Re 1/- per kg for refraction. This fact was further confirmed by the State Government of West Bengal, Department of Food and Supplies vide memo no. 569(3) - FS/Sectt/Food/4P-02/2016/2021 dated 18.02.2022.

2.8 The applicant will charge crushing charges from the State Government valued at Rs 179.48 per quintal. This rate was last notified by the Government of West Bengal, Food and Supplies Department vide memo no. 2583(3) – FS/Sectt/Food/4P-02/2016 dated 07.09.2018. The following table reflects the bifurcation of this amount:

Particulars	Amounts (in Rs.)
Crushing Charges	90.78
Fortification Charges	10.00
Packing Charges	50.00
Transportation & Handling Charges	28.70
Total	179.48

2.9 The applicant will receive wheat from the State Government in gunny bags and the State Government will leave it with him for retention as well as non-monetary consideration.

2.10 The applicant will receive Rs 136.48 per quintal from the State Government after deduction of Rs 43/- for the 2 gunny bags, which is non-monetary consideration.

2.11 The applicant supplies services to the State Government by way of an activity in relation to a 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 Notification No. 2/2018- Central Tax (Rate) dated 25th January, 2018 prescribes 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, as a supply of services which is exempt from GST.

2.13 Circular No. 153/09/2021-GST dated the 17th June, 2021 on the subject GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS, states

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. 3 A 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.

2.14 The provisions regarding value of supply are contained in Section 15 of the Act. Sub-section (1) of Section 15 states that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

2.15 In the given case price is not the sole consideration for the supply and as per the contract the amount of consideration is as follows:

Particulars	Amounts (in Rs.)
Crushing Charges	90.78
Fortification Charges	10.00
Packing Charges	50.00
Transportation & Handling Charges	28.70
Total	179.48

2.16 In addition to the above, the cost of gunny bags is reduced from the amount of Rs 179.48/- as the State Government considers the retention of gunny bags by the applicant as non-monetary consideration. Therefore, the cash consideration paid by the State Government is Rs 179.48/- reduced by Rs 43/-, which is Rs 136.48/- per quintal.

2.17 Bran and refraction are generated during the process of milling of wheat into flour. These scrap or wastes generated in the course of milling are further processed to make them saleable in the market. The contract entered into with the State Government stipulates that the applicant will retain 1kg refraction and 4kgs bran for conversion of each 100 kgs wheat. As per the contract these bran and refraction are retained by the applicant and it is sold in the open market at the prevailing market rates which is generally around Rs 20/- per kg for bran and Re 1/- per kg for refraction. This rate was also confirmed by the memo issued by State Government of West Bengal, Department of Food and Supplies vide memo no. 569(3) - FS/Sectt/Food/4P02/2016/2021 dated 18.02.2022. Further, as bran and refraction are to be included in the value of supply, the valuation shall be done in accordance with the subsequent paragraphs.

2.18 Since price is not the sole consideration for supply, the provision of Rule 27 would apply which govern the provisions of value of supply of goods or services where the consideration is not wholly in money.

2.19 Rule 27 is reproduced herein under for ease of reference:

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

2.20 Further, since the crushing services supplied by the applicant is customized, its open market value is not available at the time of supply and therefore the provisions of Rule 27(b) will be applicable for the instant case.

2.21 The cash consideration is Rs 136.48/- per quintal. The non-monetary considerations include gunny bags, bran and refraction. The value of these non-monetary considerations is known at the time of supply as the net realizable value is ascertainable.

2.22 Value of 2 gunny bags should be included in value of supply on the basis of consideration as defined by the Food and Supplies Department of Government of West Bengal in their Department vide memo no. 2583(3) – FS/Sectt/Food/4P-02/2016.

2.23 Value of supply shall include the cash consideration received and net realizable value (i.e., sale value reduced by further processing costs) of non-monetary consideration which include gunny bags, bran and refraction.

2.24 As per Circular No. 153/09/2021- GST dated the 17th June, 2021, if exemption is not available to the flour millers, owing to conversion of wheat into flour not being eligible for exemption by virtue of Notification No. 12/2017 – Central Tax (Rate), the rate of tax applicable shall be 5%.

2.25 In order to determine whether exemption is available or not, the following calculation is required to be done:

Component of Goods in Value of Supply

_____ x 100

Value of Supply

2.26 The State Government, according to the contract, pays Rs 50/- towards packing charges and Rs 10/- towards fortification charges. However, these amounts tantamount to consideration for material as well as service. Therefore, it is submitted that value of materials will be definitely less than the value of packing charges as mentioned in the consideration.

2.27 The value of supply is Rs 260.48/- wherein the consideration for component of goods is received as packing charges and fortification charges received which amounts to Rs 60/-. Hence, the ratio comes to $60/260.48 \times 100 = 23.03\%$. Since the component of goods in the composite supply does not exceed 25% of the value of supply, therefore, the supply shall be exempted from GST.

2.28 The Department of Food & Supplies of the Government of West Bengal, in its memo no. 569(3)-FS/ Sectt./Food/4P-02/2016/2021 dated 18.02.2022 explained that as the maximum value of involvement of goods in the composite supply is less than 25% of the total value of the said composite supply, it qualifies for exemption as per Entry 3A of Notification No. 12/2017- CT(Rate) dated 28.06.2017 read with State Notification No. 1136-FT dated 28.06.2017.

2.29 The applicant, in course of personal hearing, has furnished a written submission arguing further which is reproduced herein under:

1.1.1 It is reiterated that the rate of tax applicable on services provided by the Applicant is 5%, if it does not qualify for exemption granted vide Notification No. 2/2018 – Central Tax (Rate), by virtue of Circular No. 153/09/2021 – GST dated 17.06.2021. The relevant extract of the exemption notification is reproduced as under:

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 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

- 1.1.2 The determination of exemption granted by the aforesaid notification depends on the value of supply of goods in the value of composite supply. In case the value of supply of goods in value of composite supply does not exceed 25%, the said supply is exempt from GST. Further, as per the submission made along with the application for advance ruling, the value of supply was arrived at Rs 260.48/- per quintal.
- 1.1.3 The component of goods in the said composite supply is packing material only. The value of supply of such packing material as per the cost sheet provided by the State Government is Rs 50/- per quintal. The value of the packing material is calculated as per the cost sheet provided by the State Government and not as per actuals. Owing to the continuous nature of the contract, the actual value of the packing material is not determinable at the time when GST is levied. Hence, consideration of the actual cost of packing material would render the application of the aforesaid notification impossible.
- 1.1.4 Therefore, the value of supply of goods as a proportion to the value of the composite supply is 19.20% [i.e., $50/260.48 \times 100$]. Since the value of supply of goods does not exceed 25% of the value of the composite supply, the services provided by the Applicant to the State Government is exempt from GST.
- 1.1.5 In addition to the above, fortification charges are collected from the State Government towards fortification process involving premixing of micro nutrients while processing the whole wheat into atta, which is in the nature of consumables. The said process of fortification does not amount to supply of goods by the Applicant to the State Government, rather it is a process carried out by the Applicant for provision of its services. Hence, the nutrients mixed with the atta are in the nature of consumables.
- 1.1.6 Further, as per Section 2(30) of the CGST Act, *“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.*
- 1.1.7 Basis above, composite supply must consist of two or more taxable supplies provided by the supplier. Nutrients added in the atta as fortification process cannot be considered as a separate/ distinct supply of goods in addition to the service of milling of wheat into flour as it is an integral part of the process of such conversion. It is just one step involved in the process of such conversion.
- 1.1.8 Without prejudice to the above, even if the fortification charges are considered to be a supply of goods, the value of supply of goods as a

proportion to the value of the composite supply is 23.03% [i.e., $60/260.48 \times 100$]. Even in this case, since the value of supply of goods does not exceed 25% of the value of the composite supply, the services provided by the Applicant to the State Government is exempt from GST.

1.2 As a conclusion, it is reiterated that the component of goods in the said composite supply is only packing material. Hence, the value of goods must be construed to be packing charges only. Such charges are derived from the cost sheet given by the State Government specifying the packing charges to be Rs 50. There is no iota of doubt that fortification process is a service and not liable to be considered as the component of goods in the said composite supply. Further, as the value of goods does not exceed 25% of the value of composite supply, the service provided by the applicant is exempt from GST.

3. Submission of the Revenue

The submission of the officer concerned from the revenue is reproduced herein under in verbatim:

- *What is the value of supply of services provided by the Applicant Company to the State Government?*

3.1 Section 15 of the GST Act deals with the provisions of value of taxable supply and as per provision of sub section (1) of section 15, the value of supply of goods or services or both is the transaction value, only where the supplier and the recipient of the supply are not related persons and the price is the sole consideration for the supply. According to the “explanation” appended to section 15, persons shall be deemed to be “related persons”, if one of them directly or indirectly controls the other {“explanation”-(a)(v)}. The applicant who is the supplier in the instant case and recipient, Govt of West Bengal in the instant case, has entered into an agreement subject to some conditions and restrictions. Hence, it is clear that one has control over the other and vice versa and therefore, they are related persons. Hence, the value of supply should be determined according to the provisions made u/s 15(4) of the said Act which reads as:

“(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.”

Determination of Value of supply has been prescribed in Chapter IV of WBGST/CGST Rules, 2017 in rules from 27 to 35 and the instant case matches with the provisions made u/r 30 of the said rules which states that “30. Value of supply of goods or services or both based on cost- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of production of such service.

Furthermore, section 15(2) states that the value of supply includes “(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and

any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

Hence, the value of goods should be one hundred and ten percent of the cost of provision of services by the supplier (the applicant) to the recipient (Govt. Of West Bengal) including incidental expenses.

- *What is the rate of tax applicable on the value of supply? What components and at what value are to be included in calculation of the % of value of goods in the total value of composite supply for the purpose of Notification No. 2/2018- central Tax(Rate) ?*

3.2 In connection with the question raised by the applicant, I would like to refer to the Notification No. 2/2018-Central Tax (Rate) dated 25-01-2018 and Circular No. 153/09/2021- dated 17th June, 2021. GST both issued by Government of India, Ministry of Finance, Department of Revenue Entry No 3A of Notification No. 2/2018 Central Tax (Rate) dated 25-001-2018 states that

“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 Governmental 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.” is exempted from tax.

Paragraph No 3.1 and 3.2 of Circular No 153/09/2021- GST is represented here under:

- “3.1 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.”
- “3.2 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. 3 A 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.”

Hence, a combined reading of Paragraph No 3.1 and 3.2 of the circular referred to and as represented herein above that whether the supply of the applicant will come under SI No. 3A or not, is a matter of case- to- case study and subject to the substantiation that the value of goods does not exceed 25% of the value of the composite supply.

If the value of goods exceeds 25% of the value of the composite supply, then the composite supply, being a job work service (entry No 26 of notification No 11/2017-Central Tax (rate) dated 28.06.2017) provided to a registered person, the applicable rate is 5%.

The supply in question (milling of wheat and fortification thereof by miller) is a composite supply and it is conditionally exempted from tax. Hence, if it is taxable on the grounds as discussed herein above, naturally tax will be charged on the entire value of supply.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative 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 The issue involved in the instant case, as we find, is to determine whether the instant supply shall qualify as an exempt supply vide entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended vide Notification No. 2/2018- Central Tax (Rate) dated 25.01.2018) or the same shall be taxable @ 5% as clarified in para 3.2 of the Circular No. 153/09/2021-GST dated 17.06.2021 issued by the CBIC.

4.3 The issue, therefore, is required to be analysed considering the following aspects:

- (a) whether the supply made by the applicant can be regarded as composite supply of goods and services;
- (b) 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;
- (c) if the answers of (a) and (b) 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.

4.4 The applicant 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 labelled poly-packs having thickness of 50 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. The officer concerned from the revenue has expressed that the applicant and Govt of West Bengal has entered into an agreement subject to some conditions and restrictions thereby one has control over the other and vice versa and therefore, they are related persons. We are unable to accept this proposition. If that be so, then in all the cases where the supplier and the recipient enter into a contract, they would be regarded as 'related person'. We therefore do not incline to agree with the view taken by the officer concerned from the revenue that in the instant case, the value of supply should be determined according to the provisions made u/s 15(4) of the GST Act and rules made there under.

4.8 The applicant states that it will charge crushing charges from the State Government valued at Rs 179.48 per quintal. This rate was last notified by the Government of West Bengal, Food and Supplies Department vide memo no. 2583(3) – FS/Sectt/Food/4P-02/2016 dated 07.09.2018. The applicant further states it will receive wheat from the State Government in gunny bags and the State Government will leave it with him for retention as well as non-monetary consideration and so the cost of gunny bags valued at Rs.43/- is reduced from the amount of Rs 179.48/- as the State Government considers the retention of gunny bags by the applicant as non-monetary consideration. Therefore, the cash consideration paid by the State Government is Rs 179.48/- reduced by Rs 43/-, which comes at Rs 136.48/- per quintal. Further, the contract entered into with the State Government stipulates that the applicant will retain 1kg refraction and 4kgs bran for conversion of 100 kgs of wheat. As per the contract these bran and refraction are retained by the applicant and it is sold in the open market at the prevailing market rates which is generally around Rs 20/- per kg for bran and Re 1/- per kg for refraction. This rate was also confirmed in the memo issued by State Government of West Bengal, Department of Food and Supplies vide memo no. 569(3) - FS/Sectt/Food/4P02/2016/2021 dated 18.02.2022.

4.9 The applicant submits that vide the contract, the State Government pays Rs 50/- towards packing charges and Rs 10/- towards fortification charges. However, this amount comprises of consideration for material as well as services. Therefore, it is submitted that value of materials will be definitely less than the value of packing charges as mentioned in the consideration. 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.

4.10 The applicant has contended that the process of fortification does not amount to supply of goods by the applicant rather it is a process carried out by the applicant for provision of its services. According to the applicant, nutrients added in the atta as fortification process cannot be considered as a separate/ distinct supply of goods in addition to the service of milling of wheat into flour as it is an integral part of the process of such conversion.

4.11 The aforesaid submission of the applicant as referred to in the preceding paragraph has been considered. We find from the agreement made between the applicant and the State Government that the applicant has been selected for empanelment for crushing of wheat into wholemeal atta and fortify it by pre-mixing micro-nutrients and to pack it in 1Kg poly pouch/packet and to deliver the same to the nominated M.R.Distributors. We have already expressed our view that such 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. The State Government agrees to pay the applicant a total amount of Rs.179.48 for crushing of 100 kgs of wheat which includes fortification cost of Rs.10/- and packing charges of Rs.50/-. In para 3.1 of Circular No. 153/09/2021-GST dated 17.06.2021, it has been clarified that '...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.'

4.12 Thus, in the instant case, the applicant receives Rs.10/- and Rs. 50/- i.e., Rs. 60/- in total against fortification cost and packing charges respectively for crushing of 100 kgs of wheat which involves supply of goods. We have to determine whether such value exceeds 25% of the total value of supply or not. According to the applicant, total value of supply would be Rs 260.48/- which includes both cash and non-cash consideration. In this context, we find that in a similar kind of activity, the Appellate Authority for Advance Ruling (AAAR, for short), Andhra Pradesh in the matter of Sri Kanakadurga Rice and Flour Mill reported in [2020] 121 taxmann.com 121 (AA - GST - AP) held that 'it is clear that the value of by-products so retained by the appellant yielded during CMR milling, which were allowed to be retained by the appellant to meet the CMR activity cost shall obviously be included as part of value of supply and also to be termed as a *bona fide* form of consideration'

4.13 We are also of the same view that in the instant case, value of supply shall be the consideration in money and shall also include all the components towards non-cash consideration, as discussed. We also like to reproduce here relevant portion of the memo no. 569(3)-FS/Sectt./Food/4P-02/2016/2021 dated 18th February 2022 issued by the Department of Food & Supplies, Government of West Bengal:

"The State Government is providing 100 Kgs of Wheat to the empanelled Flour mills and it is taking back 95 Kgs of fortified Atta. 5 Kgs of by-products generated are bifurcated into Bran and Refractor in the Ratio 4:1 vide Notification No. 2834-FS dated 06.09.2017. This is also mentioned in the bi-partite agreement between the DCF&S/DR and the flour millers. These bi-products are valued as per market price @ Rs.20/kg of Bran and Re 1/kg of Refractor. So, consideration from sale of 4kg Bran and 1kg refractor comes to Rs.81 only. 100 Kg wheat is supplied to flour millers in 2 gunny bags. The flour millers retained those 2 gunny bags,

which are valued at Rs.43 only. Thus the total non-cash consideration for bi-products and gunny bags allowed to flour millers is Rs.124 only for each 100 kg wheat.”

4.14 The applicant has submitted that since price is not the sole consideration for the instant supply, the provision of Rule 27 would apply which govern the provisions of value of supply of goods or services where the consideration is not wholly in money (refer to Para 2.18). The applicant has further submitted that since the crushing services supplied by the applicant is customized, its open market value is not available at the time of supply and therefore the provisions of Rule 27(b) will be applicable for the instant case (refer to Para 2.20). Furthermore, in Para 2.21, the applicant has submitted that ‘the non-monetary considerations include gunny bags, bran and refractor. The value of these non-monetary considerations is known at the time of supply as the net realizable value is ascertainable’. Having said that, the applicant has finally accepted the total value of supply to be Rs.260.48 as we find in his submission noted in point no. 1.1.8 in Para 2.29 wherein the applicant has stated that ‘without prejudice to the above, even if the fortification charges are considered to be a supply of goods, the value of supply of goods as a proportion to the value of the composite supply is 23.03% [i.e., $60/260.48 \times 100$].’

4.15 The contention of the applicant that the provisions of Rule 27(b) will be applicable for the instant case for the purpose of determination of value of supply has duly been considered. Rule 27 of the Central Goods and Services Tax Rules, 2017 and West Bengal Goods and Services Tax Rules, 2017 (collectively referred to as, the GST Rules) prescribes the manner of determination of value of supply where the consideration is not wholly in money. In terms of clause (b) of the said rule, the value of supply shall be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply. We like to reiterate that Department of Food & Supplies, Government of West Bengal vide memo no. 569(3)-FS/Sectt./Food/4P-02/2016/2021 dated 18th February 2022 has explained that ‘These bi-products are valued as per market price @ Rs.20/kg of Bran and Re 1/kg of Refractor. So, consideration from sale of 4kg Bran and 1kg refractor comes to Rs.81 only. 100 Kg wheat is supplied to flour millers in 2 gunny bags. The flour millers retained those 2 gunny bags, which are valued at Rs.43 only. Thus the total non-cash consideration for bi-products and gunny bags allowed to flour millers is Rs.124 only for each 100 kg wheat’. So, in the instant case, the amount of Rs.124 may be considered as equivalent to the consideration not in money for the purpose of determination of value of supply under clause (b) of rule 27 of the GST Rules and such amount is admittedly known to the applicant at the time of supply. We therefore find the total value of supply to be Rs.260.48 out of which Rs.136.48 is the cash consideration and Rs.124 is the non-cash consideration, as it has been explained in the aforesaid memo. The applicant has contended that the value of materials will be definitely less than the value of packing charges as mentioned in the consideration (refer to Para 2.26). However, in absence of any documentary evidences produced before us in support of this argument, 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. 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.

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

RULING

In the instant case, value of supply shall be the consideration in money as well as non-cash consideration, as discussed. This 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 entry 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.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 18.08.2022

To,

BERHAMPUR WAREHOUSING PRIVATE LIMITED

MANKARA, BALARAMPORE, BALARAMPUR, MURSHIDABAD, West Bengal, Pincod-742165

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, GST Bhavan, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Joint Commissioner, Berhampore Charge, 14/2, Bimal Sinha Road, Netaji Market Complex, 1st floor, Berhampore, Murshidabad, Pincod 742101
- (4) The Commissioner of CGST, Bolpur Commissionerate, GST Bhavan, Nanor Chandidas Road, Sian, Bolpur, Pincod-731204
- (5) Office Folder