

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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	MURSHIDABAD FLOUR MILL PRIVATE LIMITED
Address	MANKARA, BALARAMPUR, Murshidabad, West Bengal, 742165
GSTIN	19AAECM4361R1ZS
Case Number	WBAAR 07 of 2023
ARN	AD1902230045693
Date of application	February 21, 2023
Jurisdictional Authority (State)	Baharampur Charge, Baharampur Circle
Jurisdictional Authority (Central)	BERHAMPORE Division, Bolpur Commissionerate
Order number and date	12 /WBAAR/2022-23 Dated 26.06.2023
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 Company to the State Government?
- (ii) What is the rate of tax applicable on the value of supply? What components 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 applicant, vide written submissions furnished on 02.05.2023, states that the Directorate General of GST Intelligence ('DGGI') initiated an inquiry into the business of the applicant in the month of December, 2020. Summons was issued and the applicant duly honoured the summons. But no show cause notice or demand order was issued by the DGGI till date. Moreover, no specific question with respect to any matter was raised by the DGGI. Therefore, in absence any submission on record indicating any further enquiry or investigation being carried out against the applicant at this stage, it is concluded that no proceeding is pending in this matter at this stage and the instant application is liable to be admitted in terms of the provision of Section 98(2) of the CGST Act, 2017. In this regard, the applicant has relied upon the decision of Hon'ble Telangana High Court in the matter of M/s Srico Projects Pvt. Ltd. vs. Telangana State Authority for Advance Ruling reported in 2022 (9) TMI 418 wherein the Hon'ble Court had quashed and set aside the order passed by the respondent authority and held that the respondent was not justified in rejecting the advance ruling application of the petitioner. It was observed that in the absence of any specific definition of the word 'proceeding', the said word has to be understood in the context in

which it is being applied, namely, any proceedings pending or decided in the case of an applicant under the provisions of the CGST Act, it would only mean proceedings where the question raised in the application for advance ruling has already been decided or is pending decision. Therefore, inquiry or investigation which is not in the nature of any proceeding would not come within the ambit of the word “proceedings”. It cannot be a bar under the first proviso to sub-section (2) of Section 98 of the CGST Act, 2017. The applicant further relied upon the decision of the West Bengal Authority for Advance Ruling in the matter of Jai Lokenath Flour Mills Private Limited bearing case number WBAAR 26 of 2022, where the members had admitted advance ruling application by considering the decision of Hon’ble High Court and agreed to the fact that the inquiry or investigation would not come within the ambit the word ‘proceeding’.

1.7 The officer concerned from the revenue vide letter dated 11.04.2023 pointed out that “the taxpayer/ applicant had stated that they disclosed their outward supplies made to the State Government and discharged GST @5% from their own coffers as they had never collected the tax from the State Government. The Taxpayer/applicant further stated that the Directorate General of GST Intelligence (DGGI), during the course of investigation in December, 2020, asked them to pay GST @18% from 01.07.2017, and accordingly, they paid the differential amount of Rs.5,50,62,464/-. As per available records the proceeding initiated by DGGI against the taxpayer has not attained finality yet”.

1.8 In terms of first proviso to sub-section (2) of section 98 of the GST Act, an application for Advance Ruling made under sub-section (1) of section 97 shall not be admitted by the Authority where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the GST Act. We have duly considered the submission made by the applicant. We find that the fact of the case of M/s Srico Projects Pvt. Ltd. vs. Telangana State Authority for Advance Ruling, on which the applicant has placed his reliance, is different from the case of the applicant. In the above-referred case, the application for advance ruling was filed on 11.05.2019 and notice was issued by the DGGI on 15.12.2021 i.e., much after the filing of application for advance ruling. The Hon’ble Court thus held that ‘the same cannot be a bar under the first proviso to sub-section (2) of section 98 of the CGST Act’. In the instant case, the DGGI had initiated inquiry in the month of December, 2020 while the applicant has filed the application in the month of April, 2023. However, the applicant has submitted that no show cause notice or demand order was issued by DGGI and no specific question with respect to any matter were issued by DGGI. The Hon’ble Telangana High Court, in para 12 of the aforesaid order, has observed that ‘inquiry or investigation would not come with the ambit of the word ‘proceedings’. Considering the fact that no specific question or show cause notice has been issued by the DGGI at this stage, the application is 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 already furnished in the Table in aforesaid para 2.8.

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/4P-02/2016/2021 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 service 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:

$$\frac{\text{Component of Goods in Value of Supply}}{\text{Value of Supply}} \times 100$$

2.26 The Applicant also submits that the value of supply as considered in Question No. 1 above, is (cash consideration + net realizable value of gunny bags, bran and refraction). The component of goods is packaging material and vitamins required for fortification process

2.27 The State Government, according to the contract, pays Rs 50/- towards packing charges and Rs 10/- towards fortification charges. The Applicant also submits that if the result of the aforementioned calculation is less than 25%, exemption will be available as per Notification No. 12/2017. However, if the said calculation results in the ratio to be 25% or more, then the tax rate applicable is 5%.

2.28 The component of goods in the said composite supply is packing material and vitamins. The value of supply of such packing material and vitamins are Rs. 50/- and Rs.10/- per quintal respectively. Such value of the packing material and vitamins are 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 and vitamins are not determinable at the time when GST is levied. Hence, consideration of the actual cost of packing material and vitamins would render the application of the aforesaid notification impossible.

2.29 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.

2.30 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.

2.31 The applicant also believes in the Appeal filed by M/s Maa Laxmi Enterprise on 31.05.2022 against Advance Ruling Order No. 18/WBAAR/2021-22 dated 31.12.2021, which states that - 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- 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. In the instant case the supply of fortified whole meal flour to the Food & Supplies Department, Govt. of West Bengal will fall under entry no. 3A of Notification No. 12/2017-Central tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1136 FT dated 28.06.2017) and exempt from taxation.

2.32 Pursuant to DGGI investigation, the applicant was coerced to make an ad-hoc payment of Rs.5,50,62,464/-. However, no show cause notice or order has been passed in connection

with the said enquiry till date. Hence, aggrieved by the conduct of the authority with regard to payment of astronomical amount of tax, the applicant had filed for refund under the head "in any other (specify)" vide FORM GST-RFD-01 bearing ARN: AA190922033698P dated 22/09/2022. The said refund application has been disposed off vide order in FORM-GST-RFD-06, bearing no. ZI1901230090337 dated 09.01.2023.

3. Submission of the Revenue

The jurisdictional officer on behalf of the officer concerned from the revenue has appeared before the members on 13.04.2023. He stated that the case is presently under investigation by DGGI. He has been asked to verify whether any proceeding is pending in relation to the case before DGGI under any provisions of CGST Act, 2017/ WBGST Act, 2017. He has also been asked to submit the present status of the case within 15 days. In response, reply has been received wherein it has been mentioned that the Unit/Taxpayer was under investigation by DGGI, HQ, New Delhi since 2021 and now the case has been transferred to and is being handled by DGGI, KZU for further investigation. They also informed that the case is still under investigation and about to attain finality shortly.

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 representative of the applicant during the course of personal hearing. The submission of the officer concerned from the revenue has also been taken on record.

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 analyzed 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, Citrate, EDTA and Vitamins 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 them 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 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 them 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.

4.8 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.

4.9 The aforesaid submission of the applicant as referred to in the preceding paragraphs 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 whole meal 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.'

4.10 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'

4.11 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 by-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 by-products and gunny bags allowed to flower millers is Rs.124 only for each 100 kg wheat."

4.12 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. 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. Furthermore, the applicant has submitted that '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'. Having said that, the applicant has finally accepted the total value of supply to be Rs.260.48 wherein the value of supply of goods as a proportion to the value of the composite supply is 23.03% [i.e., $60/260.48 \times 100$].

4.13 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 by-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 by-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. 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.

4.14 However, in course of personal hearing, it has come to our notice that while disposing of a refund claim amounting to Rs.5,50,62,464/- of the applicant for the period 01/07/2017 to 31/12/2020, the Assistant Commissioner, CGST & CX, Berhampore Division in his Speaking Order No. 08/GST/Refund/AC/BER/2022-23 dated 09.01.2023 made the following observations:-

The taxpayer's claim that they paid GST under tax bracket of 5% in absence of any precedence stipulating the value of supply of goods in the said composite supply is not tenable as Sl. No.3A of Notification No. 12/2017-Central tax (Rate) dated 28.06.2017 clearly exempts such composite supply of goods & services in which the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply provided to the Central Govt., State Govt. or Union Territory or Local Authority or a Govt. Authority or a Govt. 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. The value of goods and services in the composite supply made by them was to be calculated by them and if the supply was eligible for

exemption they were free to avail the exemption in terms of Sl. No.3A of Notification No. 12/2017-Central tax (Rate) dated 28.06.2017. But they preferred to pay tax @5% under entry no. 26 of Notification No. 11/2017-Central tax (Rate) dated 28.06.2017. It implies that they were aware of their contribution of goods and services in terms of percentage of value of the composite supply and so their supply is not exempt from GST. The tax rate of 5% is applicable in case of job work service provided to a registered person. Further, Circular No. 153/09/2021-GST dated 17/06/2020 clarifies that if composite supply / job work service in which the value of composite supply does not exceed 25% of the value of the composite supply is provided to any unregistered party, GST @18% is applicable on the entire value of supply. The noticee remained silent whether the supply was made to a registered person or not. They also did not submit any copy of contract entered into by the company with the State Govt for the period of refund. They provided a copy of contract entered into by the company with the State Govt. that was made on 3rd March, 2022. Therefore, whether the composite supply during the period from 01.07.2017 to December, 2020 was made to the State Govt. or not could not be ascertained.

The Noticee claimed that the judgement made by the West Bengal Authority for Advance Ruling in the case of M/s. Berhampur Warehousing Private Limited [2022(9) TMI 367] and the judgement made by the Appellate Authority for Advance Ruling, West Bengal in the case of M/s. Maa Laxmi Enterprise [2022(9) TMI 202] are applicable to them as the case of the noticee is identical with the business entity. They further claimed that the State Govt vide Notification No. 2834-FS/Sectt/Food/4P-14/2013 dated 06.09.2017 published in the official Gazette of Kolkata, have specified rate of supply of goods and services and terms of the contract which were also same for all the flour mills. The claim of the noticee is based on the fact that the terms and condition laid down in said notification were also completely identical for all the millers. But in the absence of any contract between the noticee and the State Govt. during the period under consideration it could not be ascertained that they made the supply to the State Govt. Therefore, unless and until it is proved that the noticee made the said supply to the State Govt. under same terms and condition and the details of business of those aforesaid business entities are made known to the office, their submission of “identical matters” appears not to be acceptable.

It was found that the said composite supply is not exempt from tax and as the supply was not made to the registered person, GST @18% is applicable on the said

supply. Therefore, the refund claim of Rs.5,50,62,464/- is found non-refundable to the taxpayer as per Section 54 of the CGST Act, 2017 read with Rule 92(3) of the CGST Rules, 2017.

4.15 It thus appears that the question raised by the applicant has already been decided by the jurisdictional authority in a prior proceeding while deciding the refund claim as discussed earlier. Therefore, the present case is hit by the first provision to Section 98(2) of the GST Act. Hence, we are of the considered view that no ruling can be passed in the instant case.

In view of the above discussions, we refrain from pronouncement of any ruling.

(SARTHAK SAXENA)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 26th June, 2023

To,

MURSHIDABAD FLOUR MILL PRIVATE LIMITED

MANKARA, BALARAMPUR, Murshidabad, West Bengal, 742165.

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, GST Bhavan, 180, Shantipally, R.B.Connector, Kolkata-700107.
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015.
- (3) The Deputy/Assistant Commissioner, BERHAMPORE DIVISION, CGST & CX, Bolpur Commissionerate, Central Goods & Services Tax Building, 26/23, Saheed Surya Sen Road, Berhampur, Murshidabad, PIN-742101.
- (4) The Commissioner of CGST & CX, Bolpur Commissionerate, Central Goods & Services Tax Building, Nanoor Chandidas Road, Sian, Bolpur, Birbhum, PIN-731204.
- (5) Office Folder