

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 Act, 2017)

BENCH

Ms Susmita Bhattacharya, 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 Act, 2017 or West Bengal Goods and Services 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 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	MANOJ MITTAL
Address	LOWER BASEMENT FLOOR, BARUA SQUARE, SEVOKE ROAD, SILIGURI, District: DARJEELING, WEST BENGAL, PIN-734001
GSTIN	19AFDPM6288A1ZD
Case Number	01 of 2021
ARN	AD190121000446N
Date of application	January 06, 2021
Order number and date	18/WBAAR/2020-21 dated 22.03.2021
Applicant's representative heard	Mr Shubham Khaitan, Authorised Representative Mr Gaurav Sharma, Authorised Representative

1. Admissibility of the Application

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 have a place of business with two sections out of which one section has a sweet parlour and the applicant is claimed to be engaged in selling sweetmeats, namkeens and bakery items off the counter in the form of takeaways from the said sweet parlour. In other section of the premises, the applicant is claimed to be engaged in preparing and serving fast food snacks and beverage items which can either be consumed at the premises or allowed as takeaways. In addition to this, the applicant is also engaged in providing catering services to an educational institution which provides education services up to secondary school.

1.3 Based on the aforesaid nature of supply, the applicant has sought advance ruling in respect of the following questions:

(a) Whether sale from the portion of the sweetmeats and bakery shop should be categorized as supply of goods?

(b) Whether input tax credit should be eligible on the sale of items specified in the preceding question?

(c) Can the supply of food items and beverages from the facility which offers the opportunity of eating at the same premises be classified as restaurant services attracting a rate of GST of 5%?

(d) Can input tax credit be availed on restaurant services provided in question (c) above?

(e) In case of receipt of common input tax credit in the form of inputs, input services and capital goods, will reversal of input tax credit be required in terms of Rule 42 and 43 of the CGST Rules 2017?

(f) Will the catering services provided to the educational institution qualify as an exempt supply based on the agreement?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (a), (b) and (d) 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

Submission of the applicant made along with application (FORM GST ARA 01) dated 06.01.2021

2.1 The applicant is engaged in supply of sweetmeats, namkeens and bakery items off the counter in the form of takeaways. The applicant is also engaged in preparing and serving fast food snacks and beverage items which can either be consumed at the premises or

allowed as takeaways. Both the activities are carried out from the place of business of the applicant having two segregated portions, as submitted. Take away counter is designed in such a way that customers are allowed to take food items from the counter and the applicant doesn't provide any facility to serve the items for consumption of the same in the premises. In another section, restaurant service is offered by the applicant where applicant prepares and serves fast foods snacks, beverage items which can either be consumed at the premises or the customers can take it away. The applicant argues that the aforesaid two sections are separated not only in respect of billing counters but the applicant maintains separate registers and books of accounts for two types of business..

2.2 The applicant has entered into an agreement with Sri Sri Academy, a secondary educational institution, to serve food items on pre decided monthly cost basis. The copy of agreement between Sri Sri Academy and the applicant is submitted.

2.3 The applicant expresses that the supply of sweetmeats, namkeens and bakery items from the sweet parlour should be considered as supply of goods as no iota of service is attached in takeaway counter. Independent nature of these two sections proves that they are not naturally bundled. If the restaurant service is closed, takeaway counter can be operated independently. Hence, sale of food items from the takeaway counter should be treated as supply of goods with applicable rate of tax with the benefit of input tax credit.

2.4 The applicant portrays its view related to restaurant service that it is a composite supply as per entry 6(b) of schedule II of GST Act, 2017. Their service qualifies as restaurant service as defined in explanation (xxxii) of Notification No. 11/2017 Central Tax (Rate) dated 28/06/2017, as amended from time to time. In case of restaurant service, applicant agrees to the condition of above mentioned notification for non availability of input tax credit.

2.5 The applicant doesn't form different opinion regarding reversal of input tax credit where common input, input services and capital goods are used for both the premises.

2.6 Sri Sri Academy qualifies within the definition of education institution as defined in explanation (y) of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017, as amended from time to time and supply of catering services to Sri Sri Academy should be exempted as per entry serial no 66(b)(ii) of the said notification.

The applicant made additional submission on 05.03.2021 during personal hearing:

2.7 The applicant, by way of furnishing another written submission on 05.03.2021 has reiterated that the applicant runs two types of business from his place of business and maintains separate accounts for each type of business. A list of documents which are attached by the applicant along with the written submission is appended below:

Sl. No	Nature of the document	Remark, offered by the applicant
1.	Trade licence Certificate vide no 201222020220171 for period 2020-2021 issued by Siliguri Municipal Corporation	These trade licence was given only for "Sweet Parlour"- Snacks & Sweet Parlour bearing premises no 443/A/534/434, Sevoke Road in ward no 10

2.	Trade licence Certificate vide no 201222020225159 for period 2020-2021 by Siliguri Municipal Corporation	These trade licence was given only for "Restaurant A/c"- bearing premises no H/443/A/534/434, Sevoke Road in ward no 10
3.	A specimen copy of invoice for sweet parlour vide bill no BB-4803 dated 03/03/2021	Two separate billing counters for two premises. The applicant stresses that one section has no authority to generate invoices for another section. Heading and serial numbers of the invoices are maintained separately i.e. serial number heading of invoices of sweet parlour and restaurant are demarcated by BB and RS respectively.
4.	A specimen copy of invoice for restaurant vide bill no RS-4728 dated 10/02/2021	
5.	Bank account statement of ICICI Bank for the period 01/01/2021 to 31/01/2021	The applicant claims that all business transaction activities of sweet parlour is deposited in ICICI bearing IFS code ICIC0003870
6.	Bank account statement of Axis Bank for the period 01/01/2021 to 06/02/2021	The applicant claims that all business transaction activities of restaurant are deposited in Axis Bank.
7.	Sale register of Sweet Parlour	Books of accounts of two premises are maintained separately. Sale and purchase registers of sweet parlour and restaurant are provided to prove its arguments.
8.	Sale register of restaurant	
9.	Purchase register of Sweet Parlour	
10.	Purchase register of restaurant	

2.8 Further, in support of his submission that books of accounts are maintained separately for the two units, the applicant, vide e-mail dated 10.03.2021 has sent Provisional Profit & Loss A/c and Provisional Balance Sheet of BALAJEE BHOG-RESTAURANT and BALAJEE BHOG-SWEETS PARLOUR respectively for the period from 01.04.2020 to 28.02.2021.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue has furnished a written submission dated 03.02.2021 through e-mail wherein he has observed as follows:

- (i) Sale of sweetmeats, namkeens and bakery items from the sweet parlour is to be treated as supply of goods if the same are not served or consumed in the parlour.
- (ii) ITC can be availed in respect of sweet parlour if there is strictly supply of goods only from the parlour.
- (iii) Supply of food items and beverages from the restaurant can be classified as restaurant services which will attract tax @ 5% subject to the condition that ITC on goods and services used in supplying the services has not been availed.
- (iv) Catering services provided to Sri Sri Academy will qualify as exempt services so long as the school itself qualifies for educational institution defined in Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

3.2 During the course of hearing, the revenue, on being requested by this Bench, has furnished a report wherefrom it appears that the sweetmeats parlour and restaurant are totally separated from each other and the buyers, after purchasing food items from the

sweetmeats counter, have no option to consume the food in the premises. The applicant maintains separate billing counter and books of accounts for his two types of business.

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. The expression “restaurant services” according to Explanation given in Notification No. 20/2019-Central Tax (Rate) dated 30.09.2019 [corresponding West Bengal State Notification No. 1699 F.T. dated 30.09.2019] means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

4.2 The applicant is of the view that as per the aforesaid definition, serving of fast food snacks and beverage items by the applicant which may either be consumed at the premises or may be taken away should be classified under the category of restaurant services.

4.3 On the other hand, supply of food items from the sweetmeats parlour should be classified as supply of goods since anyone can come and purchase any item of any quantity from the sweetmeats counter without visiting the restaurant and such supplies have no direct or indirect nexus with restaurant services and are completely independent of restaurant activity.

4.4 It appears from the aforesaid mode of business as carried out by the applicant that when goods are supplied from the sweetmeats parlour without any element of supply of services or as a part of any services, it cannot be considered as a ‘composite supply’. Such supplies shall be treated as supply of goods and shall attract tax accordingly.

4.5 Supply of food and beverage items made in the restaurant or as takeaways from the restaurant counter having an element of supply of services shall qualify as ‘composite supply’. The principal supply being the supply of restaurant service, tax on such supply shall be levied according to entry serial number 7 of the Notification No. 11/2017- Central Tax (Rate) dated the 28th June, 2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017).

4.6 Further, the applicant has entered into an agreement for providing catering services with Sri Sri Academy, an educational institution affiliated with Central Board of Secondary Education which provides educational services up to secondary school. It transpires from the copy of the agreement that the applicant undertakes to provide meals, food and beverages to the students (both day boarding and hostel students) and staffs according to the rate as specified in the agreement. In addition to this, the applicant supplies catering services to the auditor, guests, guests/parents on programme days.

4.7 Sl. No. 66 (b)(ii) of the Exemption Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, as amended from time to time (corresponding West Bengal State Notification No. 1136 F.T. dated 28.06.2017) is applicable to services provided to an educational institution, by way of, catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory only in cases where the institution provides services by way of pre-school education and education up to higher secondary school or equivalent.

4.8 The term 'catering' has not been defined under the GST Act. In Cambridge Dictionary, 'catering' is defined as any job making or serving food. In Collins Dictionary, 'catering' has been defined as the activity or business of providing food for people. However, the term 'outdoor catering', according to Explanation given in Notification No. 20/2019- Central Tax (Rate) dated 30.09.2019 (corresponding West Bengal State Notification No. 1699 F.T. dated 30.09.2019) means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.

4.9 In the case in our hand, the applicant provides catering services to an educational institution which provides education services up to secondary school. Reference may be drawn to para 2 of the Circular No. 85/04/2019-GST dated 01.01.2019 issued by the Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India, where it has been clarified that "A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017."

4.10 Supply of catering services to an educational institution providing education services up to higher secondary school or equivalent, therefore, shall get covered under the entry serial number 66 (b)(ii) of the Exemption Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 and shall be exempted from payment of tax.

4.11 However, the agreement made between the applicant and Sri Sri Academy also requires the applicant to provide food and beverages to the auditor, guests, guests /parents on programme days. Evidently such supplies of services are event based and occasional in nature and falls under the category of 'outdoor catering'. The supply, therefore, shall attract tax @ 5% vide entry serial number 7(iv) of the Notification No. 11/2017- Central Tax (Rate) dated the 28th June, 2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017, as amended from time to time) without credit of input tax charged on goods and services used in supplying the services.

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

RULING

- (i) Supply of food and beverages from the sweetmeats counter by the applicant, where the customers have not been provided with any services in relation to consume the same in the premises, shall be categorized as supply of goods and the applicant is eligible to avail input tax credit in respect of such supply of goods subject to conditions as laid down in Chapter V of the GST Act and rules made there under.
- (ii) Supply of food items and beverages by the applicant which offers the facility of eating in the same premises along with takeaway of the same shall be treated as restaurant services and shall attract tax @ 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken.
- (iii) Supply of catering services to the educational institution, based on the agreement, is found to be covered under entry serial number 66 (b)(ii) of the Exemption Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, as amended from time to time (corresponding West Bengal State Notification No. 1136 F.T. dated 28.06.2017) and shall, therefore, be exempted from payment of tax.
- (iv) Supply of food and beverages to the auditor, guests/ parents on programme days, as it appears from the agreement shall be treated as 'outdoor catering' and shall attract tax @ 5% vide entry serial number 7(iv) of the Notification No. 11/2017- Central Tax (Rate) dated the 28th June, 2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017) provided that credit of input tax charged on goods and services used in supplying the service has not been taken.
- (v) The applicant shall follow the principle of apportionment of credit as laid down in sub-section (1) and (2) of section 17 of the GST Act read with rule 42 and 43 of the CGST/WBGST Rules, 2017 in respect of common input tax credit in the form of inputs, input services and capital goods.

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

(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling