

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)

BENCH

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	AAKASH FOOD PRODUCTS PRIVATE LIMITED
Address	3/1, Diamond Harbour Road, Khidderpore Kolkata- 700023
GSTIN	19AADCM9354K1ZW
Case Number	23 of 2021
ARN	AD191121003891G
Date of application	December 01, 2021
Order number and date	22/WBAAR/2021-22 dated 29.03.2022
Applicant's representative heard	Mr. Manish Raj Dhandaria, Authorised Representative Ms. Sakshi Jhaharia, Authorised Representative

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 company 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. It is submitted that the ownership of wheat or atta is never transferred to the applicant company.

1.3 The applicant has made this application under sub section (1) of section 97 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 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

2.1 The applicant submits that he 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 wheat meal atta and fortify it by premixing of micro nutrients containing Iron 60 grams, Folic Acid 1.5 grams and Vitamin A 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 The applicant states that under the aforesaid contract, he 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 mentioned in Para 2.1 above. The contract also stipulates that the applicant shall pack the fortified atta into poly pouches of 500 grams, 750 grams or 1 kilogram each in properly levelled poly-packs having thickness of 40 microns or above and 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.

2.3 The applicant states that he is entitled only to the conversion cost of wheat into atta as applicable and the contract specifies that the out turn ratio of atta will be minimum of 95% per quintal of wheat allowing refraction of 1% for cleaning and 4% for de-branning to the maximum. The refraction and bran generated in the process of conversion of wheat into flour, is not collected by the State Government and there is no mention of the fate of these waste products anywhere in the contract. The applicant submits further that if the State Government however, asks for the bran and refraction any time then he has no right whatsoever to retain the products.

2.4 The applicant submits that he is only engaged in the processing/ crushing of wheat into atta which involves mixing some ingredients as stated earlier which are incidental to the process of conversion of wheat into fortified atta. The applicant also incurs expenses towards purchases of the said ingredients and packaging material as referred to in the contract.

2.5 The applicant submits that during the process of conversion of wheat into atta, by duly mixing the ingredients mentioned in para 2.1 above, two types of wastes are generated, namely bran and refraction which are retained by him 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.

2.6 The applicant submits that for conversion of wheat into atta/ fortified atta, he charges Rs 179.48 per quintal from the State Government which comprises of following charges:

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

2.7 However, 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 a non-monetary consideration. Therefore, the cash consideration paid by the State Government is Rs 179.48/- reduced by Rs 43/-, finally comes at Rs 136.48/- per quintal.

2.8 The applicant submits that he is engaged in the provision of 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.

2.9 The applicant submits that Notification No. 2/2018- Central Tax (Rate) dated 25th January, 2018 exempts 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.

2.10 The applicant submits that 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, clarifies that In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it

clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

2.11 The applicant further submits that section 15 of the GST Act 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.

2.12 The applicant also submits that Rule 27 of the Central Goods & Services Tax Rules, 2017 and West Bengal Goods & Services Tax Rules, 2017 (hereinafter collectively referred to as Rules) prescribes valuation rules for value of supply of goods or services where the consideration is not wholly in money. The said Rule 27 is reiterated as follows:

“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”.*

2.13 Hence, the value of non-monetary consideration shall be added to the value of supply along with the cash consideration received. Therefore, as per the provisions of Section 15 of the Act read with Rule 27 of the Rules, and based on the contract entered into, the value of supply shall be Rs 179.48/- per quintal.

2.14 Relying on the clarification given in Circular No. 153/09/2021-GST dated the 17th June, 2021, the applicant submits that if the supply of services being undertaken by him doesn't get covered under Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 (as amended from time to time), such services shall attract tax 5%.

2.15 According to the applicant, as the value of the instant composite supply comes at Rs 179.48/- wherein value of goods towards the component of packing charges is declared at Rs 50/-, the value of supply of goods, involved in this supply, constitutes more than 25 per cent. of the value supply and therefore the instant supply of services shall attract tax @ 5%.

3. Submission of the Revenue

Submission of the concerned officer from the revenue is reproduced verbatim as under:

3.1 On the basis of the submission by the applicant the value of supply is Rs. 179.48/- per quintal which consist crushing charges of Rs. 90.78/-, fortification charges of Rs. 10/- packing charges Rs. 50/- and Transportation & handling charges Rs. 28.70/- Totalling of Rs.

179.48/- as per proviso of sec 15 of CGST Act, 2017 read with rule 27 of the CGST rules, 2017 subject to the value and statement provided by the applicant is true and correct.

3.2 If the value of goods exceeds 25% of the value of the composite supply, the rate of GST applicable on this supply is 5% (as per circular no 153/09/2021-GST dated 17th June, 2021). Further in order to determine whether exemption is available or not, the following calculation is required to be done a) Component of Goods in value of supply divided by value of supply, then multiple by 100. From the submission of the applicant it is found that components of Goods is packing charges received which is Rs. 50/- and value of supply is Rs. 179.48/-. Hence, the ratio comes to $50/179.48 \times 100 = 27.86\%$. Since the components of goods in the composite supply exceeds 25% of the value of supply therefore, the rate of GST applicable on this supply is 5%.

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 representatives of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the Revenue.

4.2 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 serial 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 is, therefore, required to be analysed considering the following aspects:

- (a) whether the value of supply of goods constitutes more than 25 percent of the value of the said composite supply or not;
- (b) whether the supply 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;

4.4 However, during the course of hearing, it has come to surface that a proceeding has been initiated in respect of the applicant by the Directorate General of GST Intelligence (DGGI) and the applicant, on being aggrieved by the summons issued under Section 70 of the Central Goods and Services Tax Act, 2017, has filed a writ petition before the Hon'ble High Court at Calcutta.

4.5 The authorized representative of the applicant has furnished a written submission stating that no specific matter is pending or decided by the DGGI against the applicant since no show cause notice was issued and no demand order was passed. The applicant has reiterated that in the summons, nothing was mentioned specifically about the nature of default done by the applicant. It was merely mentioned that inquiry is being conducted for GST evasion and non-payment of GST on taxable supplies. Till now the applicant has neither received any show cause notice nor any intimation by the DGGI. The applicant, thus, argued that the instant application for Advance Ruling is eligible to be admitted as the

disqualification specified in the proviso to section 98(2) of the GST Act does not attract in the given case.

4.6 The applicant further puts his argument in the following manner:

- In the instant application for advance ruling, the applicant has sought answers to two queries:
 - Value of Supply of Milling Service provided to the State Government
 - Value of Supply of goods in the value of composite supply, for the purpose of determination of GST rate applicable on the said supply

In this regard, it is submitted that the Writ Petition vide W.P.A. No. 11423 of 2020 under Article 226 of the Constitution of India, was filed challenging the legality of the summons issued by DGGI. In the same petition, a question regarding the rate of GST being 5% or 18% was put forth. It is submitted that the matter with respect to GST rate being 5% or 18% is not under dispute after the circular no. 153/09/2021- GST dated 17.06.2021 was issued by CBIC. Also, the applicant has not posed this question before the Authority for Advance Ruling. Hence, the question regarding disallowance of the application under the first proviso of section 98(2) does not arise.

- It is also submitted that the disallowance pertains to application where the question asked in the application is pending or decided 'under any of the Act'. It is important to note that a writ petition filed before the High Court is by virtue of the power given to High Courts vide Article 226 of Constitution of India. Hence, the matter pending before the High Court is in accordance with the Constitution of India and therefore it cannot be termed as a proceeding under any of the provisions of the CGST Act.
- It is submitted that the applicant did not receive any formal letter or correspondence regarding the consideration payable as per the best of their knowledge. However, in practicality the amount of cash consideration, as stated in the submission made earlier was Rs. 136.48 per quintal. In order to substantiate this figure along with the set off of gunny bags from the total value of consideration, the applicant has drawn attention to Memo No. 2538(3)- FS/Sectt./Food/4P-02/2016 dated 07.09.2018 and 569(3) - FS/Sectt./Food/4P-02/2016 dated 18.02.2022 respectively.
- The actual cost of the packing materials and vitamins fluctuate based on several factors. Therefore, there are concerns with respect to the periodicity of calculation of the values as well as the possibility of falling under different GST rate brackets in a given period. This could cause serious difficulty in accounting and determining the rate of GST applicable. Hence, it is submitted that the value of packing materials and vitamins must be considered as per the aforesaid memo defining consideration of packing charges at Rs. 50 per quintal and that of fortification charges at Rs. 10 per quintal.

4.7 The first proviso to sub-section (2) of section 98 of the GST Act speaks that the Authority shall not admit the application 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 this Act.

4.8 The applicant has contended that the instant application for Advance Ruling is eligible to be admitted as the disqualification specified in the proviso to section 98(2) of the GST Act does not attract in the given case.

4.9 We have carefully considered the arguments as put forth by the applicant in this regard. We reiterate that the moot question involved in the instant case is whether the supply of services provided by the applicant for conversion of wheat provided by the State Government, into wheat meal atta and fortify it by premixing of micro nutrients for further distribution by the State Government through Public Distribution System shall get covered under entry serial no. 3A of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 or not. The applicant himself has submitted that if the supply fails to qualify as an exempt supply vide the aforesaid entry, the same shall be taxable @ 5% as it has been clarified in Circular No. 153/09/2021-GST dated the 17th June, 2021.

4.10 Now we find that the Hon'ble High Court at Calcutta on 02.02.2021, in the matter of the applicant (WPA No.11423 of 2020) has observed that *"After hearing the parties and considering the materials on record, it appears that the core issue in this petition relates to the dispute as to the classification of the entry under which the transaction made by the petitioner no.1 with the State of West Bengal will fall."*

4.11 In the said order, the Hon'ble High Court has further observed as follows:

According to the State GST authorities, the transaction can either fall under serial no.3A of Chapter 99 wherein the imposition of service tax is 'nil' or under entry 26 of Heading 9988 wherein the maximum levy is 5% comprising of 2.5% under SGST and 2.5% under CGST. The maximum of 5% has been realised from the petitioner no.1, according to the State authorities.

The Central GST authorities, however, contend that the transaction comes within Entry No.26 under Heading 9988 of Notification No.11/2017 wherein imposition of GST has to be at the rate of 18%. Contending that 18% is the applicable rate, the Central GST authorities have alleged that there is an evasion and/or non-payment of GST and, as such, the Central GST authorities have proceeded to hold an inquiry under Section 70 of the CGST Act.

4.12 It therefore appears that there was a difference of opinion between the State GST authorities and Central GST authorities in respect of rate of tax applicable on the supply provided by the applicant. Though this issue has been clarified by the CBIC vide Circular No. 153/09/2021-GST dated the 17th June, 2021, the rate is applicable only when the supply of services does not qualify as an exempt supply vide entry serial number 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

4.13 Further, whether the supply stands exempted or not in terms of entry serial number 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, determination of value of

the composite supply along with the value of supply of goods involved in the said supply is an essential element.

4.14 The applicant has filed the instant application seeking advance ruling on what is the value of supply of services provided by the applicant and also what components are to be included to determine the value of the goods. We, therefore, fail to accept the contention of the applicant that the question raised in the application is not pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

4.15 In view of the above discussions, no ruling is given for the instant case since the questions raised in the instant application is a subject matter which is found to be pending in case of the applicant under the provisions of the GST Act.

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

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling