

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:
Ms. V. Rama Mathew, Member
Mr. Khalid Aizaz Anwar, Member

In the matter of

Appeal Case No. 02/WBAAAR/APPEAL/2022 dated 31.05.2022

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s Shiv Flour Mill, Mathurapur, Barala, Murshidabad-742225 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 16/WBAAAR/2021-22 dated 31.12.2021.

Present for the Appellant: Sri Sandip Choraria, Advocate
Smt. Payel Agarwal, ACA

Present for the Respondent: Sri. Saurav Krishna Ghosh, Joint Commissioner of Revenue,
Berhampore Charge

Matter heard on: 20.07.2022

Date of Order: 22.08.2022

1. This Appeal has been filed by M/s Shiv Flour Mill (hereinafter referred to as “the Appellant”) on 31.05.2022 against Advance Ruling Order No. 16/WBAAAR/2021-22 dated 31.12.2021, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the ‘WBAAR’).
2. The appeal petition was admitted in the light of the order passed by the Apex Court dated 10.01.2022 in the matter of ‘Cognizance for extension of Limitation’ in the matter of Misc. app. No. 665 of 2021 & 21 of 2022 and Suo Motu Writ Petition (C) no. 3 of 2020.

3. The Appellant holding GSTIN 19ACBFS2631N1ZU is a flour miller and stated to be engaged in the business of providing services of job work by crushing food grains supplied by the Food & Supplies Department, Government of West Bengal. The Food & Supplies Department supplies wheat to the appellant who crushes the grain to obtain the final product 'atta' (flour) which is fortified with micronutrients and then packed in labeled poly-packs as per specifications stipulated in the work order. The micronutrients and packing materials are supplied by the appellant. The packed fortified wheat flour is then supplied to the Food & Supplies Department to be sold / distributed subsequently under the Public Distribution Scheme (hereinafter referred to as PDS).
4. The appellant receives both cash and non-cash consideration for the job work done for the Food & Supplies Department. The wheat supplied to the appellant comes in gunny bags which are allowed to be retained by the appellant. Apart from the final product 'atta', two by-products namely Bran and Refractor are obtained on crushing of wheat and the said by-products are allowed to be retained by the appellant. By crushing of each 100 kg of wheat, the products obtained are 95 kg flour, 4 kg bran and 1 kg refractor. The non-cash considerations are thus gunny bags, bran and refractor which are later sold by the appellant.
5. The Appellant received cash consideration of Rs.136.48 for milling 100 kg wheat from Food & Supplies Department who also fixed notional consideration from sale of gunny bag @ 21.50 per bag, sale of bran @ 20/- per kg and refractor @ 1/- per kg. This is clear from Memo No. 2979(3)-FS/Sect./Food/4P-02/2016 dated 08.12.2020 issued by the Food & Supplies Department and also from the invoices raised by the miller on the Food & Supplies Department. Thus the consideration paid to flour millers for crushing 100 kg wheat is as following:

Value of supply (in Rs.) for crushing 100 kg wheat (2 gunny bags full):

(i)	Crushing Charges:	90.78	
(ii)	Add fortification cost:	10.00	
(iii)	Add packing charges:	50.00	
(iv)	Add Transportation & handling charges:	28.70	
(v)	Add consideration from sale of bran:	80.00	
(vi)	<u>Add consideration from sale of refractor:</u>	<u>1.00</u>	
	Total value of supply [(i) to (vi)]:	260.48	----- (A)
(vii)	Consideration from sale of gunny bags:	43.00	
(viii)	Add consideration from sale of bran:	80.00	
(ix)	<u>Add consideration from sale of refractor:</u>	<u>1.00</u>	
	Total non-cash consideration (vii) to (ix):	124.00	----- (B)
	Total cash consideration (A) - (B):	136.48	----- (C)

[Food & Supplies Department fixed notional consideration from sale of gunny bag @ 21.50 per bag, sale of bran @ 20/- per kg and refractor @ 1/- per kg.]

6. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as “the GST Act”) on the following questions:
 - a) Whether the instant composite supply of services by way of milling of food grains into flour to Food & Supplies Department, Government of West Bengal for distribution under PDS is eligible for exemption 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);
 - b) If the instant composite supply does not fall under entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 then what will be the rate of tax for such supply.
7. The WBAAR pronounced its advance ruling dated 31.12.2021 observing that the instant supply is a composite supply. It further observed that to qualify for exemption 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), any composite supply needs to fulfil the following criteria:
 - (i) The supply must be provided to Government/Local Authority/ Governmental Authority/ Government Entity;
 - (ii) The supply must be by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution;
 - (iii) The value of supply of goods in the said composite supply shall not exceed 25% of the value of the said composite supply.

The WBAAR observed that the instant composite supply undisputedly fulfils criteria (i) and (ii) above. So the moot question is to decide whether the value of goods supplied in the said composite supply is not more than 25% of value of total supply. The goods supplied to the Food & Supplies Department in the composite supply are micronutrients like iron, folic acid, vitamins etc. and for this Rs.10/- is received from the Government for fortifying atta obtained by crushing 100 kg wheat. Further the miller supplies the packing material as per specifications and for this Rs.50/- is received for packing of 95 kg atta produced from 100 kg wheat. So the value of goods supplied in the composite supply stands at Rs.60/- for 100 kg wheat and the WBAAR

also agreed upon this valuation. However regarding valuation of the entire composite supply, the WBAAR did not accept the valuation of Rs.260.48 for crushing of 100 kg wheat as per para 5 above under the observation that the valuation of non-cash consideration remained inconclusive as the appellant could not produce any documents regarding receipts of consideration from sale of gunny bags, bran and refractor.

8. In light of the observations stated above the WBAAR was of the view that the value of supply shall be both cash and non-cash consideration and exemption 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) will be available when the value of supply of goods in the said composite supply shall not exceed 25% of the value of the said composite supply. In case the value of goods supplied exceeds 25% of value of entire supply, the supply shall attract tax @ 5% (CGST % 2.5% and WBGST @ 2.5%).
9. The Appellant has filed the instant appeal against Advance Ruling Order No. 16/WBAAR/2021-22 dated 31.12.2021 with a prayer to set aside the said order or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:
 - a) The order passed by WBAAR is vague and inadequate;
 - b) The WBAAR erred in its conclusion that valuation could not be done in absence of documentary evidence substantiating the sale proceeds from sale of gunny bags, bran and refractor. The Appellant submits that the valuation of non-cash consideration is not dependent of actual proceeds from sale of gunny bags, bran and refractor in the open market;
 - c) The Appellant submits that in the instant case there are three sets of supply involved as under:
 - (i) Composite supply of crushing 100 kg wheat and supplying fortified wholemeal 'atta' to Food & Supplies Department, Government of West Bengal where consideration is received in both cash and non-cash and the total supply value is Rs.260.48.
 - (ii) Supply of gunny bags and by-product in the form of Bran and Refractor by Food & Supplies Department, Government of West Bengal to the petitioner at a price of Rs. 124/- fixed by the latter.

- (iii) Supply of gunny bags, Bran and Refractor by the petitioner to third parties where the petitioner is charging and paying tax at the stipulated rate on the consideration received on such supply in the open market.
- d) The Appellant submits that the cash and non-cash consideration have been stipulated by the Food & Supplies Department, Government of West Bengal vide Memo No. 2979(3)- FS/Sect./Food/4P-02/2016 dated 08.12.2020 where cash consideration has been fixed at Rs.136.48 and non-cash consideration at Rs.124/- So total consideration for crushing 100 kg wheat comes to Rs.260.48 which has been agreed upon by the Appellant and the Food & Supplies Department, Government of West Bengal. **The consideration that the Appellant and the third parties will agree upon at the time of sale of gunny bags, bran and refractor in the open market cannot be the deciding factor in the price agreed upon by the Appellant and Food & Supplies Department for crushing of 100 kg wheat and supplying fortified wholemeal 'atta' in labelled poly-packs as per stipulation.** The Appellant submits that the WBAAR erred in its judgement on considering the actual consideration received for sale of gunny bags, bran and refractor to be a part of the valuation of composite supply.
10. During the course of hearing the Appellant's authorised advocate reiterated the points as stated in the Grounds of Appeal. He emphasized on the point that non-cash consideration as fixed by the Food & Supplies Department, Government of West Bengal needs to be taken for valuation of composite supply of milling services at Rs.260.48 against every 100 kg wheat and not dependent on the actual consideration received from the open market from disposal of gunny bags, bran and refractor. He also argued that it was established before the WBAAR that the non-cash consideration will be a part of total consideration of the composite supply and which was also accepted by the WBAAR as observed from the order dated 31.12.2022. In this connection the Appellant's authorised advocate submitted Memo No. 569(3) - FS/Sect./Food/4P-02/2016/2021 dated 18.02.2022 issued by the Food & Supplies Department, Government of West Bengal where it is clarified that the total non-cash consideration allowed to flour millers is Rs.124/- only for each 100 kg wheat and thus the value for milling services to produce 95 kg of fortified 'atta' from 100 kg wheat stands at Rs.260.48. The Appellant's authorised advocate also presented copies of invoices raised by the flour mill on the Food & Supplies Department during the course of hearing to substantiate that invoice value of composite supply was in accordance with valuation of supply as detailed in Para 5. It is observed from the invoices that total value of composite supply was Rs. 260.48 against 100 kg wheat and non-cash considerations were deducted to obtain cash consideration. In the invoices non-cash consideration was @ Rs.21.50 per piece of gunny bag and @ Rs.81/- for bran and refractor against 100 kg of wheat.

11. The respondent made a written submission where he commented that exemption 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) is dependent on the valuation of goods involved in the composite supply.
12. The matter is examined and written and oral submissions made before us are considered. It has already been accepted by the WBAAR in its ruling in Order No. 18/WBAAR/2021-22 dated 31.12.2021 that the total value of composite supply will comprise both cash and non-cash considerations. The WBAAR did not consider the valuation of Rs.124/- per 100 kg wheat being supply consideration of gunny bags, refractor and bran. It erred in its opinion that the non-cash consideration will be the actual sum received from open market on supply of gunny bags, refractor and bran. The WBAAR failed to appreciate that the valuation of the composite supply is the agreed upon price between the flour millers and the Food & Supplies Department. This agreed upon price includes the notional value of Rs.124/- of two gunny bags and 5 kg by-products (1 kg refractor and 5 kg bran) which are retained by the miller, irrespective of actual disposal price of those gunny bags and by-products in future. The supply value of milling of wheat in the instant case cannot be dependent on actual receipts by the miller in future from third parties in disposal of the retained goods. It is clear from Memo No. 2979(3)-FS/Sect./Food/4P-02/2016 dated 08.12.2020 read with Memo No. 569(3)-FS/Sect./Food/4P-02/2016/2021 dated 18.02.2022 that the total supply price is Rs.260.48 for milling services to produce 95 kg fortified atta from 100 kg wheat. The value of goods in the composite supply is not more than Rs.60/- being cost of elements for fortification and packing materials. **So the percentage of value of goods in the composite supply is established to be lesser than 25% of the total supply value.**

The WBAAR, in its advance ruling dated 31.12.2021, has observed that the instant supply is a composite supply. The WBAAR has also observed that the instant composite supply undisputedly fulfils criteria (i) and (ii) in Para 7 above. Now, it has been observed that the value of goods in the instant composite supply is lesser than 25% of the total supply value. So the instant composite supply fulfils all the three criteria for qualifying for exemption 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) as listed in para 7 above.

In view of above discussion, we rule that in the instant case the supply of fortified wholemeal flour to the Food & Supplies Department, Government 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.

The Advance Ruling No. 16/WBAAR/2021-22 dated 31.12.2021 is modified to this effect and the Appeal stands disposed of accordingly.

Send a copy of this order to the Appellant and the Respondent for information.

-Sd/-

(Mr. Khalid Aizaz Anwar)
Member, West Bengal Appellate
Authority for Advance Ruling

-Sd/-

(Ms. V. Rama Mathew)
Member, West Bengal Appellate
Authority for Advance Ruling