

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

**Before:
Mr. A.P.S Suri, Member
Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 04/WBAAAR/APPEAL/2019 dated 28.02.2019

- 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 the Joint Commissioner (in-situ), CGST & CX, Ballygunge Division, Kolkata South Commissionerate.

Present for the Appellant: Sri Santanu Bandyopadhyay, Superintendent, Central Tax, Ballygunge Division, Kolkata South CGST & CX Commissionerate, and Sri Rasheswar Mondal, Superintendent, Central Tax, Ballygunge Division, Kolkata South CGST & CX Commissionerate

Present for the Respondent: Smt. Sudeshna Chatterjee, Authorised Representative

Matter heard on: 11.04.2019

Date of Order: 15.05.2019

This Appeal has been filed by the Joint Commissioner (in-situ), Ballygunge Division Division, Kolkata South CGST & CX Commissionerate (hereinafter referred to as “the Appellant”) on 28.02.2019 against Advance Ruling No. 36/WBAAAR/2018-19 dated 28.01.2019, pronounced by the West Bengal Authority for Advance Ruling in the matter of the M/s Vedika Export Tea Pvt. Ltd.

2. M/s Vedika Export Tea Pvt. Ltd, located at Karnani Estate, AJC Bose Road, Kolkata, (hereinafter referred as the Respondent), holding GSTIN 19AAACV8586B1Z1, stated to be a contract packer of tea bags 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 question:

- (i) Classification of the services provided in packing of tea bags;
- (ii) Rate of GST on the said service

3. The West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) pronounced its advance ruling by an order dated 28.01.2019 as under:

- “(i) The Respondent makes a composite supply to M/s Hindusthan Unilever Ltd. (hereinafter referred to as HUL) where the service of manufacturing tea bags from the physical inputs owned by the latter is the principal supply;
- (ii) The Respondent’s service is classifiable under SAC 9988 and taxable at 5% rate under Sl. No. 26 (f) of the Notification No. 11/2017-CT (Rate) dated 28.06.2017, as amended from time to time;
- (iii) Applicability of this ruling with respect to other recipients is subject to the specific nature of the contracts with them.”

4. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR 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 WBAAR erroneously treated the transaction between the respondent and HUL as a composite supply. To qualify for a composite supply, the supply must consist of two or more taxable supply of goods or services or both. In the instant case there is only supply of a single service that being packaging service.
- (b) HUL procures, transports and delivers to the respondent’s manufacturing unit all the raw materials, packing and other materials required for packing tea bags. The ownership of all material goods at all time is with HUL. The respondent merely undertakes to package the tea using the materials supplied by HUL. In terms of Schedule II of GST Act, 2017 any treatment or process which is applied to another person’s goods is a supply of services. As the respondent never enjoyed the title of goods, his supply never consists of any supply of goods.
- (c) The WBAAR erroneously considered putting tea into tea bag as manufacturing service. Section 2(72) of the GST Act defines manufacturing as the processing of raw materials or inputs in any manner that results in the emergence of a new product having a distinct name, character and use. Packaging activity on the other hand makes the same product more suitable for handling, delivery, preservation, retailing etc. Tea bag has no new character and use other than marketed tea. Further neither the Central Excise Tariff nor the Customs tariff has considered the activity of packing tea in teabags as manufacturing activity. Section 2f(iii) of the Central Excise Act, 1944 as amended defined ‘manufacturing’ in relation to the goods specified in the third schedule. As tea or tea bags are not included in the third schedule, packing of tea do not merit to be considered as manufacturing.
- (d) The WBAAR erroneously considered putting tea into tea bag as manufacturing service as the agreement between the respondent and HUL do not say that the

respondent has the responsibility to undertake any activity or processes like plucking, withering, wilting, disruption, oxidation, fixation, kill-green, rolling, shaping, drying, aging, curing or tea sorting.

5. During the course of hearing the Appellant reiterated the points as stated in the Grounds of Appeal. The Appellant emphasized on the point that the transaction is not a composite supply as there is only one type of supply of services involved, that being supply of packing services. Further no new product emerges from the process.

6. The Respondent submitted that the process of service undertaken by him involves assembly of materials on machine including blended tea leaves and other inputs received from HUL. The Respondent used to classify it as packaging service under SAC 998540 and charge GST under Sl. No. 23(iii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 (hereinafter referred to as “the Rate Notification”) amended vide Notification No. 1/2018-CT (Rate) dated 25.01.2018. On 01.11.2018 the Respondent received communication from HUL informing that the services should be taxed under Sl. No.26(f) of the Rate Notification amended vide Notification No. 31/2017-CT (Rate) dated 13.10.2017. Sl. No.26(f) of the Rate Notification applies to manufacturing service under SAC 9988 on physical inputs owned by others for food and food products falling under chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975. The WBAAR in its ruling dated 28.01.2019 pronounced the supply classifiable under SAC 9988 and taxable at 5% rate under. Sl. No. 26(f) of the Rate Notification, as amended from time to time. The Respondent further stated that none of the other recipients of similar services from the Respondent have raised similar issues and those services continued to be classified as packaging service under SAC 998540 and charge GST @18% under Sl. No. 23(iii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017

7. The matter is examined and written and oral submissions made before us are considered.

8. As the ruling of the WBAAR and the appeal petition is restricted to the classification and GST rate of supply of services by the Respondent to HUL, the discussion in this forum is also restricted to the transaction between the Respondent and HUL.

9. For the sake of clarity these two entries of the Rate Notification are reproduced below:

Entry at serial No. 23 (SAC 9985) :

Support Services-

- (i) Supply of tour operators services. Explanation- “tour operator” means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.
- (ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for

registration under sub-section (1) of section 22 of the Central Goods and Services Act, 2017

(iii) Support Services other than (i) and (ii)

Entry at serial No. 26 (SAC 9988)

Manufacturing services on physical inputs (goods) owned by others –

(i) Services by way of job work in relation to –

(f) all food and food products falling under chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975

10. SAC 9985 41 includes packaging of goods for others, such as food products, pharmaceuticals, household cleaners, toilet preparations and hardware using a variety of automated or manual packaging techniques, including blister forming and packaging, shrink or skin wrapping, form filling and sealing, pouch filling, bottling and aerosol packaging. This service may also include the labelling or imprinting of the package.

11. The Appellant argued that making tea bags is nothing but filling pouches and as no new product emerges the service ought to be classified under SAC 9985.

12. If we look at entry at sl. no. 26(i)(f), tea falls under chapter 9 of the Tariff Act. Again the physical inputs (goods) provided to the Respondent are owned by others, in this case HUL. It needs to be examined whether the service provided by the Respondent qualifies to be a manufacturing service.

13. As per Ms. Smaraki Mahapatra, Member :

Section 2(72) of the GST Act defines “manufacture” as the processing of raw materials or inputs in any manner that results in the emergence of a new product having a distinct name, character and use. In tea bags blended tea leaves are put into special porous pouches and then stitched so that for making tea the bag needs to be dipped in hot water only. Tea bags offer a quick and user friendly way of making the beverage. The tea bag pouch are made of specialized material so that it acts as a strainer for the leaves inside while allowing the beverage extract to blend in the water. The tea bag pouch is an essential input of making tea bags and not a mere packaging material. Packaging activity makes the same product more suitable for handling, delivery, preservation, retailing etc. Consumption of the goods require them to be taken out of packaging. At no time the tea leaves are taken out of the tea bags. Tea bags are also packed in cartons, film wrapped and put into larger boxes for delivery. These outer cartons, boxes and films are the packaging materials while tea bags are the final products. Packing of tea bags in cartons is an ancillary service to the main service of making tea bags. Tea and tea bags are distinct and separate commercial products. Manufacturing of tea leaves and manufacturing of tea bags are completely separate processes. Processes like plucking, withering, wilting, disruption, oxidation, fixation, kill-green, rolling, shaping, drying, aging, curing or tea sorting are processes associated with manufacturing of tea and

not tea bags. Tea bags have distinct character and use and rightly classified under Tariff item 0902 40 40

In view of above discussion it is held that the service offered by the Respondent to M/s Hindusthan Unilever Ltd. is classifiable under Sl. No. 26 (i) (f) of the Notification No. 11/2017-CT(Rate) dated 28.06.2017, as amended vide Notification No. 31/2017-CT (Rate) dated 13.10.2017. and taxable @5%

13. As per Mr. A.P.S Suri, Member:

Section 2(72) of the GST Act defines “manufacture” as the processing of raw materials or inputs in any manner that results in the emergence of a new product having a distinct name, character and use. Packaging activity, on the other hand, makes the *same product* more suitable for handling, delivery, preservation, retailing etc.

The Explanatory Notes to the scheme of classification (Heading 9985: Support Service) is reproduced below:

99854: Packaging services

998541: Packaging services of goods for others

This service code includes packaging of goods for others, such as food products, pharmaceuticals, household cleaners, toilet preparations and hardware, using a variety of automated or manual packaging techniques, including blister forming and packaging, shrink or skin wrapping, form filling and sealing, pouch filling, bottling and aerosol packaging. This service may also include the labelling or imprinting of the package.

Whereas Heading 9988: Manufacturing services on physical inputs owned by others

The services included under Heading 9988 are performed on physical inputs owned by units other than the units providing the service. As such, they are characterized as outsourced portions of a manufacturing process or a complete outsourced manufacturing process. Since this Heading covers manufacturing services, the output is not owned by the unit providing this service. Therefore, the value of the services in this Heading is based on the service fee paid and not the value of the goods manufactured.

998816: Other food product manufacturing services

This service code includes grain mill product manufacturing services, starch and starch product manufacturing services, bakery product manufacturing services, sugar manufacturing services, cocoa, chocolate and sugar confectionery manufacturing services, macaroni, noodles, couscous and similar farinaceous products manufacturing services, prepared meals and dishes manufacturing services and other food product manufacturing services n.e.c.

However, the activity of M/s Vedica Exports Tea Pvt Ltd that is stuffing tea in pouches and supplying the said tea bags cannot be said to be an act of manufacturing as it has not changed the nature and character of tea. Manufacturing involves change or changes brought about by

application of processes whereby the emerging product is a new and distinct commodity and commercially it can no longer be regarded as the original one. The activity of Respondent of filling tea into tea bags does not change the basic nature of tea but only makes it classifiable under a different heading on the basis of its packaging and not on account of the nature of tea packed therein. Actually, in tea bags blended tea leaves are put into special porous pouches and then stitched so that for making tea the bags need to be dipped in hot water only. Tea bags offer a quick and user friendly way of making the beverage.

Moreover, Para 3 of Schedule II (Section 7) of CGST Act, 2017 sated that 'Any treatment or process which is applied to another person's goods is a supply of services' and SAC sub-heading No. 9985 41 clearly includes that packaging of goods (in this case tea, a food product filled in pouches) for others and should be treated as Packaging Service classifiable under SAC 998541 taxable under Sl. No. 23 (iii) of Notification No. 11/2017 – CT (Rate) as amended.

In view of above discussion it is held that the service offered by the Respondent to M/s Hindusthan Unilever Ltd. is classifiable under SAC 9985 41 and taxable @18% under Sl. No. 23(iii) of the Notification No. 11/2017-CT(Rate) dated 28.06.2017, as amended.

14. As the members of the West Bengal Appellate Authority for Advance ruling differ on the classification of the service supplied by the Respondent to M/s Hindusthan Unilever Ltd., it is deemed that no Advance Ruling can be issued in respect of the questions under Appeal as per provisions of section 101 sub-section (3) of the GST Act. Thus The Advance Ruling No. 36/WBAAR/2018-19 dated 28.01.2019 is deemed to be not in operation.

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

(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling

(A.P.S Suri)
Member
West Bengal Appellate Authority
for Advance Ruling