

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, Vanijyikar GST Bhawan, North Block Sector-19,
Atal Nagar, District-Raipur (C.G.) 492002
Email ID – gst.aar-cg@gov.in

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur(C.G)

Subject :- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by M/s Gangaur Sweets, (GSTIN-22AFFPA5069M1Z1) 31, Palace Road, Raigarh, Chhattisgarh, 496001 regarding supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from sweetshop which also runs a restaurant.

Read :- Application dated 27/12/2019 from M/S Gangaur Sweets, 31, Palace Road, Raigarh, Chhattisgarh, 496001. (GSTIN-22AFFPA5069M1Z1)

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

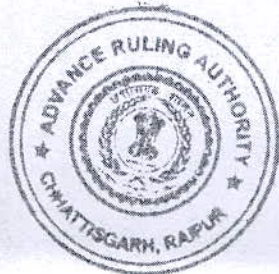
No.STC/AAR/10/2019

Raipur Dated ..12.../6/2020

M/S Gangaur Sweets, Raigarh, Chhattisgarh [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling as to whether its activity of supply of pure food items from sweetshop who is also running a restaurant is a transaction of supply of goods or a supply of service, on the nature and rate of tax applicable on the consumable items supplied from ground floor of a sweetshop/restaurant and regarding entitlement of benefit of input tax credit with respect to the above supplies.

2. Facts of the case:-

- (i) M/S Gangaur Sweets, Raigarh, Chhattisgarh [hereinafter also referred to as the applicant] is primarily engaged in the business of supplying goods & services both.
- (ii) List of items supplied from a sweetshop & restaurant are sweetmeats, namkeens, Dhokla, Paneer, Khac, cold drinks, ice creams, chocolates bakery items and other edible items.
- (iii) that, at present the applicant has opted for composition levy.



(iv) that, the applicant is primarily engaged in the business of supplying goods and services both and seeks an advance ruling on the following questions / issues as under:

- (a) whether the supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from sweetshop which also runs a restaurant is a transaction of supply of goods or a supply of service;
- (b) what is the nature and rate of tax applicable to the following items supplied from ground floor of a sweetshop in which restaurant is also located on the first floor and whether the applicant is entitled to claim benefit of input tax credit with respect to the same:
- (i) Sweetmeats, namkeens, Dhokla, Paneer, Khoa etc. commonly known as snacks, cold drinks, ice creams, chocolates, bakery items, mouth freshners and other edible items;
 - (ii) Ready to eat (partially or fully pre-cooked/packed) items supplied from live counters such as jalebi, cholabhatara and other edible items;
 - (iii) Takeaway order of sweetmeats or namkeens by a person sitting in the restaurant of a sweetshop when such products are not consumed within the premises of the applicant but are takeaway.
- (c) what is the nature and rate of tax applicable to the following items supplied from of a sweetshop in which restaurant is also located in the same place and whether the applicant is entitled to claim benefit of input tax credit with respect to the same:
- (i) Sweetmeats, namkeens, Dhokla, Paneer, Khoa etc commonly known as snacks, cold drinks, ice creams, chocolates, bakery items, mouth freshners and other edible items;
 - (ii) Ready to eat (partially or fully pre-cooked/packed) items supplied from live counters such as jalebi, cholabhatara and other edible items;
 - (iii) Takeaway order of sweetmeats or namkeens by a person sitting in the restaurant of a sweetshop when such products are not consumed within the premises of the applicant but are takeaway.

3. Contentions of the Applicant:- The applicant states the following :-

The applicant contention is that as per the prevailing market strategy today it can be noticed that very often, two or more goods or a combination of goods and services are supplied together, because of the following reasons:

- (i) A Sales strategy – to attract more customers.
- (ii) The nature or type of goods or services, which requires them to be bundled or supplied together.

Under Service Tax this mechanism is called Bundled Service – which is rendering of a service or services with another element of service or services. The service tax law



was dealing with pure services and not with goods per se. Now the concept introduced is for goods also and is linked with the concept of Principal Supply. Under GST law, supplies which are bundled with two or more supplies of goods or services or combination of goods and services are classified, with distinct characteristics, as:

i. Composite Supply

ii. Mixed Supply

"composite supply" means a supply made by a taxable person to a recipients consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business one of which is a principal supply ;

"mixed supply" means two or more individual supplies of goods or services, or any combination thereof , made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply;

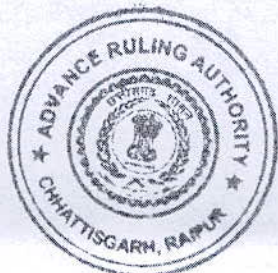
"principal supply" means the supply of goods or services which constitute the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

- (1) That, as per the applicant interpretation of law sale of sweets, namkeens ,cold drinks & other edible items through restaurants can be treated as ' composite supply ' with restaurant supply being the principal service..
- (2) That, sale of sweets, namkeens, cold drinks & other edible items from sweetshop counter can be treated as supply of goods with applicable GST rates of the items being sold & input credit can be allowed on such supply.

4. Opinion of the concerned jurisdictional officer:-

The jurisdictional Assistant Commissioner, State GST, Raigarh Circle-1, Chhattisgarh under his letter क्र./रा.कर/सहा.आ./पंजी/2020/110 रायगढ़, दिनांक 30.01.2020 in reference to the ruling sought by the applicant was of the opinion that :-

- (i) On the first question raised by the applicant, the supply shall be treated as supply of service and sweetshop shall be treated as extension of restaurant.
- (ii) With regard to the second question, the rate of GST on aforesaid activity will be 5% as on date, on the condition that credit of input tax charged on goods and services used in supplying the said service has not been taken.



All the items including take away items from the said premises shall attract GST of 5% as on date subject to the condition of non-availment of credit of input tax charged on goods and services used in supplying the said service.

- (iii) And in relation to the third question, the rate of GST on aforesaid activity will be 5% as on date, on the condition that credit of input tax charged on goods and services used in supplying the said service has not been taken.

All the items including take away items from the said premises shall attract GST of 5% as on date subject to the condition of non-availment of credit of input tax charged on goods and services used in supplying the said service.

5. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant and accordingly their authorized representative Shri Abhay Kumar Tiwari (Advocate) appeared before the authority for hearing on 30/01/2020 and reiterated their contention. They also furnished a written submission dated 30/01/2020 which has been taken on record.

6. The legal position, Analysis and Discussion:-

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

The applicant sought advance ruling to the points as under:-

- 6.1- whether the supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from sweetshop which also runs a restaurant is a transaction of supply of goods or a supply of service;
- 6.2- what is the nature and rate of tax applicable to the following items supplied from ground floor of a sweetshop in which restaurant is also located on the first floor and whether the applicant is entitled to claim benefit of input tax credit with respect to the same:
- (i) Sweetmeats, namkeens, Dhokla, Paneer, Khoa etc. commonly known as snacks, cold drinks, ice creams, chocolates, bakery items, mouth fresheners and other edible items;
 - (ii) Ready to eat (partially or fully pre-cooked/packed) items supplied from live counters such as jalebi, cholabhatara and other edible items;
 - (iii) Takeaway order of sweetmeats or namkeens by a person sitting in the restaurant of a sweetshop when such products are not consumed within the premises of the applicant but are takeaway.



6.3- what is the nature and rate of tax applicable to the following items supplied from of a sweetshop in which restaurant is also located in the same place and whether the applicant is entitled to claim benefit of input tax credit with respect to the same:

- (i) Sweetmeats, namkeens, Dhokla, Paneer, Khoa etc. commonly known as snacks, cold drinks, ice creams, chocolates, bakery items, mouth fresheners and other edible items;
- (ii) Ready to eat (partially or fully pre-cooked/packed) items supplied from live counters such as jalebi, chola bhatura and other edible items;
- (iii) Takeaway order of sweetmeats or namkeens by a person sitting in the restaurant of a sweetshop when such products are not consumed within the premises of the applicant but are takeaway.

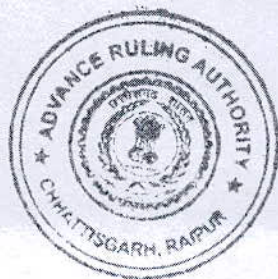
6.4- In the aforesaid context, we find that the effective rates of GST for such food and beverage services are governed by Notification No.11/2017-Central Tax (Rate) Dated-28/06/2017 read with Notification No.46/2017-Central Tax (Rate) Dated-14/11/2017 and Notification no. 20/2019-Central Tax (Rate) Dated-30/09/2019. 7.

6.5- Having gone through the text of Notifications which prescribes the applicable rate of tax on the activities relating to Heading 9963 viz. food and beverage services, we now proceed to look in to the issues raised by the applicant. On going through the activities as disclosed by the applicant in their application it is seen that they are primarily engaged in the business of supplying goods & services both i.e. they are in the business of supplying goods and services, having GSTIN-22AFFPA5069M1Z1) from their establishment at 31, Palace Road, Raigarh, Chhattisgarh. The applicant has mentioned that at the said premises they are having a sweet shop with a restaurant at the first floor.

7. In order to arrive at a definitive conclusion as regards the issues involved we would also like to go through the relevant provisions of law and the same are covered under section 2 of the Act *ibid*. The relevant portion of the same reads as under:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business one of which is a principal supply;

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;



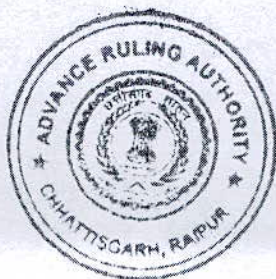
(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply;

(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

7.1 As already mentioned above we find that the applicant has a sweetshop in the ground floor and a restaurant at the first floor of the same building. In a case where two or more goods or a combination of goods and services are involved or supplied together earlier under the Service Tax regime this mechanism was called bundled service which is rendering of a service or services with another element of service of services, wherein service tax law dealt with pure services and not with goods per se. In the changed regime of GST the concept introduced dealt with goods as well and is linked with the concept of Principal Supply. Under GST law, supplies which are bundled with two or more supplies of goods or services or combination of goods and services are classified, with distinct characteristics, as (i) Composite Supply (ii) Mixed Supply. As already discussed, Composite supply is one where two or more goods or services or both are together, in a natural bundle and in a normal course of business, provided one of which is a principal supply. However, principal supply will be that supply which is predominant over other supplies. This means that the goods and services are bundled owing to natural necessities. The composite supply is taxed at the rate applicable to the principal supply whereas a mixed supply means two or more individual supplies of goods or service, or any combination thereof; made in conjunction with each other by taxable person for a single price where such supply does not constitute a composite supply. It means each of these items can be supplied separately and is not dependent on any other. In Mixed Supply, the combination of goods, and/or services is not bundled due to natural necessities, and they can be supplied individually in the ordinary course of business. Thus in order to identify if the particular supply is a Mixed Supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed Supply. Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of a supply of goods or services attracting highest rate of tax.

7.2 For the supplies made from restaurant there being supply or preparation and sale of food and serving the same there exist (i) Supply of two or more goods or services or both together (ii) Goods or services or both are usually provided together in the normal course of business, having all the ingredients of a composite supply. In this regard Schedule II of the Act *ibid* and the relevant portion of the same read as under:



SCHEDULE II
[See section 7]
ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a)

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7.3 On the basis of evidences as forthcoming from the applicant it is quite evident that the activity of the applicant from their restaurant comes under the purview of "restaurant services", falling under Heading 9963 leviable to GST rates on services as stipulated under Notification No. 11/2017-Central Rate (Tax) dated 28.06.2017 (as amended time to time) and the relevant part on of the same is as under:

Sl.No.	Chapter, Section, heading	Description of service	Rate (in%)	Condition
1	2	3	4	5
7	Heading 9963 (Accommodation, food and beverage services)	Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, 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, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.- "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air	2.5%	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken



conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

Thus the rate of GST on aforesaid activity shall be 5% as on date. As regard to the issue of admissibility of ITC credit, we find that the applicant cannot avail credit on the GST paid on the goods and services used in their said activity in terms of aforesaid notification.

7.4 Here we would also like to clarify that when the goods such as sweets, namkeens, cold drinks and other edible items are supplied to customers in the restaurant or as takeaways from the restaurant counter which are being billed under restaurant sales head these would necessarily fall under 'composite supply' with restaurant service being the principal supply, since supply of food in this case is naturally bundled with the restaurant service. The taxability of all such goods supplied to or through the restaurant will be governed by the principal service i.e. restaurant service and GST rate with applicable conditions will also be applicable to all such goods also. Input credit will not be allowed in such a case.

However in case where goods are supplied to customers through sweetshop counter having no direct or indirect nexus with restaurant service i.e. any stand alone customer who visit such sweet shop exclusively for purchase of any item of any quantity across the counter without visiting the restaurant, the billings of such sales are also done separately, such exclusive sales to such exclusive stand alone customer across the counter cannot be clubbed with restaurant service, it being an exclusive transaction of supply of goods independent of restaurant service. These sales do not satisfy the basic requirement of a 'composite supply' i.e. 'these cannot be treated as 'being naturally bundled and supplied in conjunction with each other'. Such across the counter sales from sweetshop definitely requires dissimilar treatment, it being completely independent of restaurant activity as such supply would continue unhindered, irrespective of whether the restaurant is closed or open, either temporarily or permanently. Hence such sales will be treated as supply of goods with applicable GST rates on the items supplied / sold and for only such exclusive supplies input tax credit stands admissible.

7.5 We would also like to highlight here that in case the goods supplied from the restaurant are billed under restaurant head then in such a situation such transaction will purely depend upon the constituents of each individual supply and as to whether same satisfies the conditions/ingredients of a 'composite supply' or 'mixed supply', as defined under section 2(30) and 2(74) of the CGST Act respectively. Needless to point out here that for the said across the counter transactions from sweetshop to attract the treatment as discussed above, it is of paramount importance that the said sweetshop and restaurant must necessarily function from two distinguishable and distinctly demarcated separate parts of the said registered premises of the applicant and further that both the said sweetshop and restaurant also maintains separate accounts as well as separate billings for the said two types of business.

8. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-



ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/10/2019

Raipur Dated 12/06/2020

The ruling so sought by the applicant is answered as under:

(1) If the applicant opts for continuing with composition scheme under GST law, the provisions as stipulated under Section 10 of the CGST Act 2017 will be applicable for all the supplies made by the applicant and accordingly the applicant is not allowed to collect composition tax from the recipient of supplies, and neither are they allowed to take Input Tax Credit.

(2) If the applicant opts not to continue with composition scheme under GST law, then:-

(i) Supply / sale of sweets, namkeens, cold drinks and other edible items through restaurant by the applicant aptly falls under chapter heading 9963, thereby being treated as 'composite supply' with restaurant supply being the principal service. Applicable GST rates @5% [2.5% CGST + 2.5% SGST], on restaurant service will also be applicable on all such sales from restaurant and no input tax credit would be available.

(ii) Supply / sale of sweets, namkeens, cold drinks and other edible items from sweetshop counter will be treated as supply of goods with applicable GST rates of the items being sold and input tax credit would be available on such supply, provided separate bills, invoices and accounting records are maintained by the applicant.

(iii) The applicant must necessarily maintain separate records for restaurant and sweetshop with respect to all input and output supply. There should also be separate bill, invoices and accounting records for restaurant and sweetshop.

Place: - Raipur

Date: - 12/06/2020

Seal: -



-sd-
Sonal K. Mishra
(Member)

-sd-
Rajesh Kumar Singh
(Member)

TRUE COPY

Sonali
12/6/20
MEMBER

ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

TRUE COPY

R Singh 12/6/2020
MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Copy to:-

1. Applicant,
2. The Commissioner, (CGGST)
3. The Principal Commissioner, (CGST)
4. The jurisdictional officer, Raigarh Circle-1