

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/18/2018-19

Date- 21.11.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAGCB3353E1ZX
Legal Name of Appellant	Bandai Namco India Private Limited
Registered Address	T-01, 3 rd Floor, Oberio Mall, Goregaon (East), Mumbai- 400063
Details of appeal	Appeal No. MAH/GST-AAAR-18/2019-20 dated 23.08.2019 against Advance Ruling No. GST- ARA- 109/ 2018-19/B-37 dated 08.04.2019
Jurisdictional Officer	Asstt./Deputy Commissioner of CGST & CX, Division-VII, Mumbai East

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, 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 MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s. Bandai Namco India Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA- 109/ 2018-19/B-37 dated 08.04.2019



BRIEF FACTS OF THE CASE

- 1.1. Bandai Namco Entertainment Inc. ('BNEI') is a Japanese video game development company and publisher. BNEI also releases videos, music, and other entertainment products related to its intellectual properties (IP). It has the operation in all major countries around the globe including India.
- 1.2. The Indian arm is operated by means of a private company set-up under the Companies Act, 1956 bearing the name of Bandai Namco India Private Limited ('BNIPL' or 'the Company' or 'We').
- 1.3. The Company provides family entertainment centres built on Japanese standards of safety and peace of mind. The Company offers arcade games and other attractions, mainly based around Pac-Man and Ghostly Adventures themes.
2. We have registered office at T-01, 3rd Floor, Oberoi Mall, Goregaon East, Mumbai 400063 and are engaged in providing amusement facility services and running family entertainment centre in Oberoi Mall, Mumbai since October 2016.
- 2.1. The Company for its above-mentioned business operations, has stationed various gaming equipment and machines for different age groups, consisting of kids, teenagers and adults. The equipment and machines are either coin operated or card operated in its faculty.
- 2.2. The various gaming equipment are classified based on the nature of games involving physical as well as mental skills which are coin operated, and card operated such as:
 - Kiddie rides (i.e. carousel)
 - Arcade games (i.e. car drive game)
 - Redemption games (i.e. ball drop game)
 - Play area with entry and exit inside our premises
- 2.3. The list of services containing brief of the gaming activity was enclosed with the appeal memo.



- 2.4. We are registered under the provisions of Goods and Services Tax ('GST') law in the state of Maharashtra vide **GSTIN- 27AAGCB3353E1ZX**.
- 2.5. Prior to the inception of GST in India, we were registered under the provisions of Service Tax Law vide Chapter V of the Finance Act 1994 and discharged Service Tax at 15%. A copy of our service tax registration certificate and copy of latest service tax return for the period April to June 2017 was enclosed with the appeal memo.
- 2.6. Further, we were also registered under the provisions of Bombay Entertainment Duty Act, 1923 ('Bombay Entertainment Act') and paid applicable entertainment tax on the activities undertaking in the gaming zone.
- 2.7. With the inception of GST in India, both the erstwhile indirect taxes i.e. service tax and entertainment tax are subsumed and the Company is liable to pay GST on its activities as it qualifies as supply of service as per Notification 11/2017-Central Tax (Rate) dated 28 June 2017 (effective 1 July 2017).
- 2.8. The applicable rate of GST on the services of the Company was 28% i.e., 14% as Central GST ('CGST') and 14% as Maharashtra State GST ('MGST') [Notification 11/ 2017-Central Tax (Rate) dated 28 June 2017 ('Notification No. 11/ 2017')]. The relevant excerpt of the notification is reproduced:

Services	CGST Rate	Condition
<i>(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, casinos, race-course, ballet, any sporting event such as Indian Premier League and the like.</i>	14%	-

- 2.9. A sample copy of our GST return in prescribed form GSTR 3B and GSTR 1 for the initial month of July 2017 was enclosed with the appeal memo.



2.10. Also, a copy of sample invoice generated for this purpose reflecting the amount of GST at 28% was also enclosed with the appeal memo.

2.11. The above entry was amended and bifurcated in two different entries in respect of amusement parks and amusement facilities. These entries were introduced vide Notification No. 01/2018-Central Tax (Rate) dated 25 January 2018 ('Notification 1/2018') amending Notification No. 11/2017 as mentioned below:

<i>Description of Services</i>	<i>CGST Rate</i>	<i>Condition</i>
<i>(iii) Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet.</i>	9%	-
<i>(iiia) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, casinos, race club, any sporting event such as Indian Premier League and the like.</i>	14%	-

3. ASPECT ON WHICH THE ADVANCE RULING WAS SOUGHT

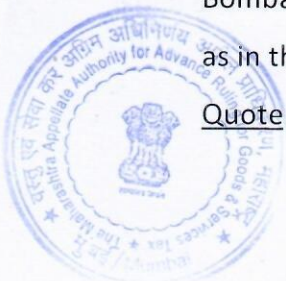
With the advent of GST Notification 01/2018, which reduced the GST rate on services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go-rounds, go-carting and ballet, we sought Advance Ruling as to determine the applicable rate of GST on the services/ activities of the Company.

4. FACTS PLACED BEFORE ADVANCE RULING AUTHORITY

4.1. The Company had submitted that the services provided by them falls under the ambit of 'amusement park' to qualify for the reduced GST rate of 18%.

4.2. The company has relied on definition of an 'amusement park' as stated in the erstwhile Bombay Entertainment Act [Section 2(a-1)] which includes the games and rides or both as in the case of the Company.

Quote



amusement park means a place wherein various types of amusements including games or rides or both (but excluding exhibition by cinematograph and video exhibition) are provided fairly on permanent basis, on payment for admission."

- 4.3. The fact that entertainment tax was applicable to the Company prior to the inception of Goods and Services Tax, also reinforces and authenticates the fact that the services provided by the Company are covered within the purview of an 'amusement park'.
- 4.4. The Company has also relied on the term 'game' as defined in the Bombay Entertainment Act which includes games operated mechanically as well as electronically.

Quote

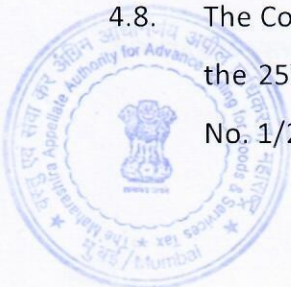
(ii) the expression 'game' includes video games which are played with the aid of machine which is operated electronically or mechanically or electromechanically for the purpose of entertainment or otherwise.

- 4.5. The Company has also referred to the comments made by Fitment Committee to ensure that the rate reduction is benefitting children.

Quote

We may consider revising the rate of GST on admission to the amusement park to 18%. However, this proposal runs the risk of states raising the tax on entertainment and amusement levied by virtue of Entry 62 of List II in the Seventh Schedule to the Constitution.

- 4.6. GST Council may consider reducing GST, provided the States agree to not increase the entertainment/amusement tax on the same. This will ensure that the rate cut of GST is passed on to children for whom it is ostensibly being done.
- 4.7. We have relied on the representation made by the Indian Association of Amusement Parks and Industries (IAAPI) for considering that such amusement parks attract large amount of people especially children, promoting social wellness and recreation.
- 4.8. The Company has also relied on the press release dated 22 January 2018 pursuant to the 25th GST Council meeting based on the recommendation on which Notification No. 1/2018 was issued, wherein emphasis was placed on the fact that the amusement



park promotes social wellness, beget fun and learning, for children and their families, and therefore the rate of GST may be reduced to 18% and ensure that this is passed on to children.

Quote

In the meeting held on 18th January, 2018, the GST Council has recommended reduction of GST rate on services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go-rounds, go-carting and ballet from 28% to 18%. These services hitherto attracted GST @ 28%. Requests were received from several quarters that amusement parks promote social wellness and beget fun and learning for children and their families in a real active entertainment and therefore, the rate may be reduced to 18%.

.....

It is expected and hoped that States do not raise the tax on entertainment and amusement levied by the local authorities (Panchayats/ Municipalities/ District Councils) so as to increase the tax burden on the amusement parks. This will ensure that the rate cut in GST is passed on to children.

5. It was also submitted that the such amusement activities such as theme park, water park, requires physical participation of the participant whereas in case of cinematic films, race clubs, sporting event etc., the individual pays the cost of entry and enjoys the event as a spectator. Basis this, the GST council has differentiated the applicable GST rates to such events.

AUTHORITY CONTENTION:

- 5.1. The Authority of Advance Ruling ('AAR' or 'the Authority') has mentioned the Wikipedia definition of amusement park wherein they have tried to rely on few below mentioned analogies, phraseologies for analysing the difference between 'amusement park' and 'amusement facility':

- i. An amusement park has multitude of attractions such as rides, games and other events whereas, an amusement facility offers singular attraction by way of gaming machines.



- ii. Amusement park is spread over a large area of land whereas, an amusement facility is spread over limited area/ closed area.
- iii. Amusement park may contain other auxiliary facilities like food court, lodging facilities however, there is no scope for the same in case of an amusement facility.
- 5.2. The Authority has also referred to the Far lex dictionary meaning of a park to elaborate on the large area of land being used for specific purpose. Basis this they have cited that an amusement park is generally a big open area, containing various amusement facilities within, which may be under covered premises however, amusement facility of the Company is relatively very small covered/ closed premises.
- 5.3. The Authority has relied on the recent Honourable Supreme Court judgement in case of Commissioner of Customs (Import), Mumbai v/s Dilip Kumar and Company & ORS. wherein it was held that exemption notification should be interpreted strictly and the burden of proving applicability would be on the assessee within the parameters of the clauses.
- 5.4. Basis the above, the Authority has contended that amusement facilities and amusement parks are fundamentally different. The amusement facility by deploying gaming machine cannot qualify as an amusement park.



GROUND OF APPEAL

Entertainment and wellness purpose

- 6.1. The Authority has not considered one major aspect of the press release issued by the Government of India clarifying on the applicable GST rate of 18% for beget fun, social wellness and learning for children and their families. The relevant extract of the press release is as under:

Quote

In the meeting held on 18 January 2018, the GST Council has recommended reduction of GST rate on services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go-rounds, go-carting and ballet from 28% to 18%. These services hitherto attracted GST @ 28%. Requests were received from several quarters that amusement parks promote social wellness and beget fun and learning for children and their families in a real active entertainment and therefore, the rate may be reduced to 18%

.....

It is expected and hoped that States do not raise the tax on entertainment and amusement levied by the local authorities (Panchayats/ Municipalities/ District Councils) so as to increase the tax burden on the amusement parks. This will ensure that the rate cut in GST is passed on to children.

Unquote

The company has relied on the views expressed in the press release dated 22 January 2018 pursuant to the 25th GST Council meeting based on the recommendation of which the Notification 1/ 2018 was issued to reduce GST rate to pass on the benefit of GST to children and promote social wellness and entertainment.

- 6.2. Neither does the GST law provide the definition of an amusement park nor clarification any is provided by the Government for interpretation of the above press release.



6.3. From pure reading of the press release, it is prudent that the Government had proposed this reduction in GST rate for promotion of beget fun, learning and social wellness which is the primary business activity of BNIPL

6.4. Further, the Authority have also not considered the following submission made by the company which highlight the purpose and social wellness and entertainment.

a) List of activities of the Company

- i. Joy ride for children
 - This includes activities like merry go-round, cyclone motor, ice wheel which are small sized rides for children.
- ii. Children amusement game
 - Amusement games such as pac-man smash, PM air hockey, fun hoops, music fairy. These activities pertain to table, ball and music games for children.
- iii. Carnival game
 - A non-electrical game named rainbow falls under this activity wherein, we have to throw the token to win prizes.
- iv. Amusement game
 - Games like super bike, storm mania, ball spectacular, drop the hook fall under this activity.
- v. Play area for children
 - Infact and toddler zone play area is available at the premises comprising of few activities such as ball pool, sliders, trampolines.

b) Core business activities of the Company

- It is pertinent to note herein that the core business activity of the Company is to provide family entertainment facilities.
- These services provided by the Company is basis Japanese standards of safety and to provide peace of mind.
- These core business activities of the Company are completely in line with the activities mentioned in the press release dated 22 January 2018 issued i.e. activities to promote social wellness, beget fun and learning to children.



- 6.5. The above-mentioned some activities and submissions depict the nature of beget fun, social wellness and learning as a key feature of the business activities of the Company.

7. **Definition of Amusement Park**

- 7.1. The Authority in its order has referred to the definition of Amusement park as per Wikipedia as enumerated below:

Quote

*An **amusement park** is a park that features various attractions, such as rides and games, as well as other events for entertainment purposes. A theme park is a type of amusement park that bases its structures and attractions around a central theme, often featuring multiple areas with different themes. Unlike temporary and mobile funfairs and carnivals, amusement parks are stationary and built for long-lasting operation. They are more elaborate than city parks and playgrounds, usually providing attractions that cater to a variety of age groups. While amusement parks often contain themed areas, theme parks place a heavier focus with more intricately designed themes that revolve around a particular subject or group of subjects.*

7.2. **Authority of Advance Ruling allegation**

Basis the above definition, the AAR has contended the following:

- i. Amusement parks offer multitude of rides, games; and
- ii. Amusement facility offer singular attraction limited to offering entertainment by way of gaming machines

7.3. **Company contention**

Basis the Wikipedia definition of an amusement park referred by the AAR, we have highlighted the key highlights of the definition relevant to operations carried out by

BNIPL:



- i. Various attractions, such as rides and games
 - BNIPL is engaged in providing amusement activities and running a family entertainment center;
 - The Company has various gaming equipment and machine such as Kiddie rides, arcade games, redemption games, play area;
 - The Company has submitted a comprehensive list of its entertainment games and rides to the AAR
- ii. Attractions around a central theme
 - BNIPL is established around a central theme of 'Pac-man' and 'Ghostly Adventures';
 - The theme is based on an arcade game in which one tries to devour all the cookies on a stage while trying to avoid the chasing ghosts.
- iii. Has long lasting operations unlike temporary and mobile fun fair and carnivals
 - BNIPL was established in India in June 2015;
 - BNIPL is engaged in providing amusement services and running family entertainment center in Mumbai since October 2016 till date
- iv. Cater variety of age groups
 - BNIPL provides a varied range of rides and gaming activities;
 - This variety of amusement activities provided by the Company cater a wide range of age groups as below:

Nature of Activity	Age groups
Amusement Game	13 and above
Carnival Game	3 and above
Children's Amusement Game	1 to 12 years
Joy Ride for Children	1 to 12 years
Play Area for Children	3 to 12 years
Baby play area	1 to 3 years



7.4. Analysis

Basis the above analysis of the definition of an 'amusement park' and the fact that BNIPPL provided various rides and games around a central theme, caters to various age groups and has long lasting business operations, it is prudent to categorise BNIPPL as an amusement park.

8. Area of land:

8.1. The AAR has contended that an amusement park is spread over a land area of land and that the activities of the Company is enclosed in small area of mall.

8.2. Authority allegations

Authority of Advance Ruling ('AAR') has contended the following:

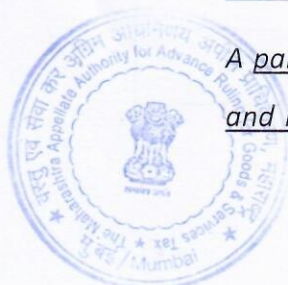
- i. Amusement park is spread over a big area over 100 to 1000 acres whereas gaming facilities is spread over a limited/ closed area of mall.
- ii. Far lax dictionary meaning of park includes '*a large area of land that is used for specific purpose*'.
- iii. The amusement activities provided by BNIPPL can neither be construed as a park nor as an amusement park.
- iv. Also, they have mentioned that that an amusement park for amusement, wildlife parks of wild animals and industrial parks for setting up industries. The common thread between all these is a 'large area of land'.
- v. Therefore, amusement park is generally a big open area containing various amusement facilities which may be covered in a limited/ closed area.
- vi. Gaming facility provided by BNIPPL cannot be construed as 'park' as such facilities are not spread over a large area of land.

8.3. Company Contention

We have referred to the Wikipedia definition of a 'park' below:

Quote

A park is an area of natural, semi-natural or planted space set aside for human enjoyment and recreation or for the protection of wildlife or natural habitats. Urban parks are green



spaces set aside for recreation inside towns and cities. National parks and Country parks are green spaces used for recreation in the countryside. State parks and Provincial parks are administered by sub-national government states and agencies. Parks may consist of grassy areas, rocks, soil and trees, but may also contain buildings and other artifacts such as monuments, fountains or playground structures. Many parks have fields for playing sports such as soccer, baseball and football, and paved areas for games such as basketball. Many parks have trails for walking, biking and other activities. Some parks are built adjacent to bodies of water or watercourses and may comprise a beach or boat dock area. Urban parks often have benches for sitting and may contain picnic tables and barbecue grills

The largest parks can be vast natural areas of hundreds of thousands square kilometers (or square miles), with abundant wildlife and natural features such as mountains and rivers. In many large parks, camping in tents is allowed with a permit. Many natural parks are protected by law, and users may have to follow restrictions (e.g. rules against open fires or bringing in glass bottles). Large national and sub-national parks are typically overseen by a park ranger or a park warden. Large parks may have areas for canoeing and hiking in the warmer months and, in some northern hemisphere countries, cross-country skiing and snowshoeing in colder months. There are also amusement parks which have live shows, fairground rides, refreshments, and games of chance or skill.

Unquote

Basis the abovementioned definition, we have highlighted the key highlights key extracts relevant for the business operations carried out by BNIPL:

Amusement activities provided in mall should be considered as amusement park basis the following:

- The Company is engaged in providing amusement activities and running a family entertainment center in mall (building) in Mumbai
- It is pertinent to note that as per the mentioned definition, park may also contain a building



- Also, basis the fact that the Company's primary motive is to provide clean and hygienic environment for its customers, maintaining the machinery and equipment in an air-conditioned environment is essential.
- Considering this, the setup in a mall is necessary to support the Company's primary motive and their long-lasting business operations.
- Also, the fact that Mumbai city is crunch in its area, the Company still has huge area of about 9000 square feet.
- Further, BNIPL is engaged in providing various attractions, such as rides and refreshments such as games for entertainment purposes that also involve physical exertion and skill.

8.4. Analysis

Accordingly, amusement activities provided by BNIPL in a mall i.e. a building structure should be considered an amusement park basis the above-mentioned Wikipedia definition of an amusement park and a park.

8.5. Other auxiliary facilities

8.5.1. The Authority has relied on the auxiliary facilities provided by an amusement park to differentiate it in relation to services provided by an amusement facility.

8.5.2. Authority allegation

The Authority is of the view that amusement park may contain other auxiliary services like food court, independent food area, lodging facilities etc. whereas there is no scope of offering in case of amusement facility.

8.5.3. Company contention

The Company has the following contention in relation to the above allegation:

- The AAR in its order has mentioned that that an amusement park may contain auxiliary facilities. The use of the word 'may' express the possibility of the presence of auxiliary facilities in an amusement park.



- ii. It does not mandate the requirement for auxiliary services for a business activity to qualify as an amusement park.
- iii. Also, on reading the Wikipedia definition of an 'amusement park' referred by the AAR in its order, it is prudent to note that there is no discussion / indication/ mention/ of any auxiliary services.
- iv. The definition of amusement park provided by AAR is in contradiction to their allegation.
- v. It is relevant to note that this definition also does not mandate any necessity to provide auxiliary activities for an amusement park.
- vi. Further, we would again like to refer of the Bombay Entertainment Act [Section 2(a-1)]

Quote

Amusement park means a place wherein various types of amusements including games or rides or both (but excluding exhibition by cinematograph and video exhibition) are provided fairly on permanent basis, on payment for admission.

8.5.4. Analysis:

Relying on the above-mentioned definition from reliable sources like Bombay Entertainment Act and Wikipedia, we understand that there is no compulsion for an amusement park to provide auxiliary services along with the principal service.

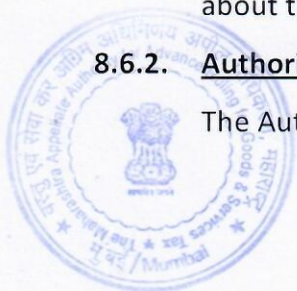
Also, the AAR in its order have expressed that an amusement park may contain auxiliary services. This makes it clear that auxiliary services are not the determining factor for an amusement park.

8.6. Burden to prove for entitlement for availing the benefit

- 8.6.1.** The AAR have referred the recent judgement of Commissioner of customs (Import) v/s. M/s Dilip kumar and Company & Ors. (**Exhibit 15**) wherein they have mentioned about the burden to prove the entitlement to be on the assessee.

8.6.2. Authority allegation

The Authority has contended the following:



- i. In case of ambiguity in an exemption Notification, the assessee cannot avail the benefit of the said notification.
- ii. In such a case, the Notification should be interpreted strictly and in favor of the Revenue.
- iii. Further, the onus to prove the entitlement of the Notification lies on the assessee.

8.6.3. Company contention

On referring the mentioned judgement, the following analysis is drawn:

- i. In case of an ambiguity in the charging provisions imposing, the benefit must necessarily go in favor of the subject/ assessee.
- ii. It is also held that in case when any word, phrase or clause which is not specifically defined in Statutory Act then in such a case the same can be referred in the General Clause Act.
- iii. However, if there is any repugnancy or conflict as to the subject or context between General Clauses Act and a statutory provision which falls for interpretation, Revenue shall refer to the provisions of statute.
- iv. In light of above, as the definition of an amusement park is not available in the Statutory Act and General Clauses Act, the company have relied on the Bombay Entertainment Act.

8.6.4. Analysis

The following key points are relevant for the Company from the above-mentioned judicial precedent:

- i. The intention of the Government for reduction in rate of GST expressed vide the Council meetings and the press release, and the ambiguity in the Notification release thereafter should be interpreted in favor of the assessee and that the burden to prove taxability lies on the Revenue



- ii. Also, as the definition of an amusement park is not mentioned in the GST law, the same should be referred from the subject matter reliable Bombay Entertainment Act.

8.7. No analytical supporting or basis provided for interpretation:

The Company is aggrieved by the order passed by the AAR due to following reasons:

- i. AAR have not analyzed the nature of business by the Company. They have not referred to the submission made by the Company i.e. the list of nature of services provided and the Company brochure.
 - ii. The order passed by AAR is based on non- analytical supporting where the phrases/ words, interpretations and definitions are on limited basis (i.e. relied on the dictionary meaning as per the Wikipedia site, etc.). Further, such interpretations do not form any analytical base but tweaked revenue favoring's.
 - iii. The authority has provided no basis such as appropriate judicial precedents for similar activities/ clarification dismissing the case is provided.
9. The order passed is not in public interest and has not considered the intention of the Government expressed in the Council meeting and the press release thereafter for reduction in rate of GST.

10. SUMMARY OF GROUNDS OF APPEAL

i. **Entertainment and wellness**

- The Company's primary motive to promote social wellness, beget fun and learning, has not been considered by the Authority.
- It is pertinent to note that this is in line with the press release issued clarifying the purpose of reduction of rate of GST.

ii. **Amusement park**

- The Authority contends that an amusement park includes various attractions around a central theme, having long lasting operations and caters to various age groups.



- All these mentioned criteria fit the characteristics of the Company business operations.

iii. **Definition of park**

- The Authority has mentioned that a park is spread over a large area of land.
- However, a park may also include a building structure i.e. a mall.
- Operating from an air-conditioned structure is necessary for maintaining cleanliness and hygiene.

iv. **Entitlement for availing the benefit**

- The benefit of an ambiguity in charging provision should necessarily be in the favor of assessee.

Respondent's Submissions

11. The Appellant was earlier registered under Service Tax having Registration No. AAGCB3353ESD001, and was paying Service Tax under the head "Promotion, Marketing, Organizing or assisting in organizing games of chance including lottery etc., at the Specific rate applicable as per Rule 6 of ST Rules at the rate of 14% and 0.5% Krishi Kalyan Cess. The Appellant is providing services of amusement facilities by deploying Gaming machines in one of the leading Mall in Mumbai. It is seen from GSTR 3B filed by the assessee during the month of June 2018, the Taxable value is Rs. 59,85,953/- and assessee has paid CGST Rs. 8,38,033/- and SGST Rs. 8,38,033 /- (Rate 28%).
12. The assessee had filed the Advance Ruling Authority Application regarding applicability of earlier Notification No. 11/2017 -Central Tax (Rate) dated 28.06.2017 amended vide Notification No. 01/2018- Central Tax (Rate), dated 25.01.2018 issued by Government of India, Ministry of Finance, Department of Revenue, New Delhi.

"The Service by way of admission to entertainment events or access to amusement facilities including exhibition of Cinematograph films, theme parks, water parks, joy-rides, merry-go-rounds, go-carting, casinos, race-course, ballet, any sporting event such as Indian Premier League and the like" are chargeable at the prescribed



GST rate of 28% (CGST 14% and SGST 14%) in term of S. NO. 34(iii) of the Notification No. 11/2017 - Central Tax (Rate), New Delhi dated 28th June 2017.

13. However, the abovesaid entries of S. No. 34(iii) of the Notification No. 11/2017 - Central Tax (Rate), New Delhi dated 28th June 2017, were bifurcated vide amendment Notification No 01/2018 - Central Tax (Rate), New Delhi dated 25th January, 2018, whereby services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go-rounds, go-carting and ballet at S. No. 34(iii) of Original Notification No. 11/2017 - Central Tax (Rate), New Delhi dated 28th June 2017, were made chargeable at GST rate of 18% (CGST 9% and SGST 9%).
14. However, the services of admission to amusement facility including the one provided by the Applicant in forms of offering gaming machine, were kept under a new S. No. namely 34(iia) which still remained chargeable at the rate of 28% (CGST 14% and SGST 14%).
15. There is a fundamental difference between amusement facility at new S. NO. 34(iia) and the amended S. NO. 34 (iii) of Notification No. 11/2017 - Central Tax (Rate) because the amusement facilities and amusement parks are fundamentally different.
16. As per Wikipedia: -

"An amusement park is a park that features various attractions, such as rides and games, as well as other events for entertainment purposes. A theme park is a type of amusement park that bases its structures and attractions around a central theme, often featuring multiple areas with different themes. Unlike temporary and mobile funfairs and carnivals, amusement parks are stationary and built for long-lasting operation. They are more elaborate than city parks and playgrounds, usually providing attractions that cater to a variety of age groups. While amusement parks often contain themed areas, theme parks place a heavier focus with more intricately-designed themes that revolve around a particular subject or group of subjects."

17. In view of the above, it is seen that there is fundamental difference between 'amusement facility with deploying gaming machines' and 'amusement park'.

(a) Whereas an amusement park offers multitude of attractions such as



rides, games and other events, the amusement facility by deploying gaming machines offers a singular attraction which is limited to offering entertainment by way of gaming machines.

- (b) The other difference is that, whereas the amusement park is spread over a big area which sometimes may be over hundred to thousand acres, the amusement facility, offering gaming machine is spread over a limited/ closed area of a mall that may be in the range of some thousand square feet.
 - (c) Whereas amusement park may contain other auxiliary facilities like food courts, independent food areas, lodging facilities etc., there is no scope of offering any such auxiliary facilities, in case of subject amusement facilities of the Appellant by way of offering gaming machines.
 - (d) An amusement park is generally a big open area, containing various amusement facilities which themselves may be under a covered premise, however the subject amusement facility of the assessee by deploying gaming machine is relatively a very small covered/ closed premises.
 - (e) In view of the above, the subject amusement facility of the Appellant by deploying gaming machine cannot qualify as an amusement park.
18. The Far lax Dictionary meaning of park includes, "a large area of land that is used for a specific purpose". However, in case of the subject amusement facilities provided by the Appellant, there is no scope that their gaming facility can be construed as a park, inter-alia because, it is not spread over a large area of land. Therefore, the amusement facility of the Appellant by way of deploying gaming machines can neither be construed as a park nor as an amusement park, so that the benefit of lower rate of GST vide amended S. No. 34(iii) of Notification No. 11/2017 - Central Tax (Rate) may be available to them.
19. The Hon'ble Supreme Court in a recent judgment in case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI V /s M/s. DILIP KUMAR AND COMPANY & ORS., Civil Appeal No. 3327 of 2007 at para 52 held that;
- (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*



(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favor of the revenue."

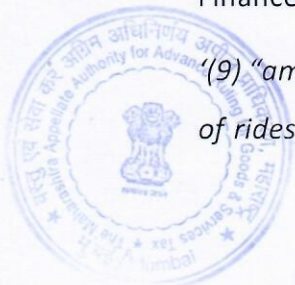
Personal Hearing

20. A personal Hearing in the matter was conducted on 20.11.2019, wherein Shri. Takeo Yagi and Shri Biren Vyas, appearing on behalf of the Appellant, as well as Shri Kartikey Dubey, Assistant Commissioner, appearing in the capacity of jurisdictional officer, reiterated their respective written submissions filed before us.

Discussions and Findings

21. We have carefully gone through the entire case records as well as the written submissions made by both the Appellant as well as the Respondent. We have also perused the impugned Advance Ruling Order, wherein it was held that the services by way of access to gaming zone, operated by the Appellant in one of the leading malls in Mumbai, will attract GST at the rate of 28% in terms of the Sr. No. 34(iiiia) of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 amended by Notification No. 01/2018-C.T. (Rate) dated 25.01.2018. On perusal of the above, the moot issue, before us, is to determine whether the gaming zone operated by the Appellant in the mall could be construed as amusement park as being proffered by the Appellant, or otherwise.
22. For the said purpose, we set out to examine the term "amusement park" and "amusement facility", and their applicability in the context of the operations carried out by the Appellant. On perusal of the GST Act, it is found that the terms "amusement park" and "amusement facility" have not been defined therein. Hence, we are compelled to resort to other relevant statutes and sources such as the various Dictionaries, so as to comprehend the meaning of aforesaid terms.
23. The term "amusement facilities" had been defined in section 65(B)(9) of the erstwhile Finance Act, 1994 as under:

"(9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades,



water parks, theme parks or such other places but does not include a place within such facility where other services are provided;'

Now, in order to understand the above definition of the term “**amusement facility**”, we seek to refer to the meaning of terms “**amusement park**” and “**amusement arcade**”, which have been used in the aforesaid definition.

Amusement Park: The term amusement park has been defined under various dictionaries as given below: -

➤ **As per dictionaryreference.com**

A large park equipped with such recreational devices as a merry-go-round, Ferris wheel, roller coaster, etc., and usually having booth for games and refreshments.

➤ **As per section 2(a-1) of the Bombay Entertainment Duty Act** “amusement park” means a place wherein various types of amusements including games or rides or both [but excluding exhibition by cinematograph or video exhibition] are provided fairly on permanent basis, on payment for admission.

➤ **As per Webster Dictionary**

a commercially operated park having various devices for entertainment (as a merry-go-round and roller coaster) and usually booths for the sale of food and drink.

➤ **As per Wikipedia:**

An amusement park is a park that features various attractions, such as rides and games, as well as other events for entertainment purposes. A theme park is a type of amusement park that bases its structures and attractions around a central theme, often featuring multiple areas with different themes. Unlike temporary and mobile funfairs and carnivals, amusement parks are stationary and built for long-lasting operation. They are more elaborate than city parks and playgrounds, usually providing attractions that cater to a variety of age groups. While amusement parks often contain themed areas, theme parks place a heavier focus with more intricately-designed themes that revolve around a particular subject or group of subjects.

24. Now, since the term “**amusement arcade**” has not been defined in GST Act or any other statute, we will resort to its meaning provided by various dictionaries.

➤ **As per Oxford Dictionary:**

an indoor area containing coin operated game machines.



➤ **As per Wikipedia:**

An amusement arcade (often referred to as a video arcade or simply arcade) is a venue where people play arcade games such as video games, pinball machines, electro-mechanical games, redemption games, merchandisers (such as claw cranes), or coin-operated billiards or air hockey tables. In some countries, some types of arcades are also legally permitted to provide gambling machines such as slot machines or *pachinko* machines. Games are usually housed in cabinets.

25. After going through the aforesaid meanings of the “amusement park” and “amusement arcade”, as provided in various dictionaries and Wikipedia, it is opined that the gaming facilities and various amusement rides offered by the Appellant in one of the malls in Mumbai will be construed as amusement arcade, and not the amusement park as propounded by the Appellant, because all the amusement rides and games are located in the covered premises or area inside the mall as envisaged under amusement arcade. It was also categorically submitted by the Appellant that they offer arcade games and other attractions, mainly based around Pac-Man and Ghostly Adventure themes, which are also arcade games only. On the contrary, the amusement park mainly talks about the rides like merry-go-round, Ferris wheels, roller coaster, etc. which can only be installed and operated in the large open field, and not in the closed premises as in the case of the Appellant. Further, it is also gathered invariably from various sources, viz- Webster Dictionary, dictionaryreference.com, Wikipedia, etc., that theme parks as well as water parks are considered as types of amusement park only with their own specific characteristic features and attraction. Again, the theme parks and water parks cannot be set up in the closed premises such as the one where the Appellant has set up its gaming zone. These can be set up only in the large open space. Thus, this fact, further, substantiates that one of the essential characteristics of the amusement parks is its large open space.
26. Thus, it has been established beyond doubt that the gaming zone operated by the Appellant in the closed premises of mall is not the amusement park but the same can more reasonably be envisaged as amusement arcade.



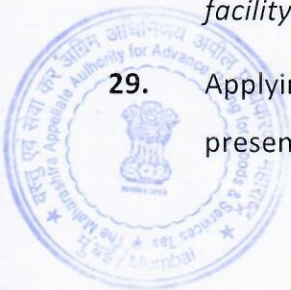
27. Now, for the purpose of examining the entries, we would like to refer to the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 1/2018-C.T. (Rate) dated 25.01.2018, which is being reproduced herein under:

<i>Description of Services</i>	<i>CGST Rate</i>	<i>Condition</i>
<i>(iii) Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet.</i>	9%	-
<i>(iiia) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, casinos, race club, any sporting event such as Indian Premier League and the like.</i>	14%	-

28. On perusal of the aforementioned rate notification, it is seen that entry (iii) talks about the amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On a plain reading of this expression of entry (iii) and applying the rule of legal interpretation, it may adequately be inferred that the said entry does not talk about the fun or recreation in the nature of the arcade games as is in the present case of the Appellant. Hence, it can decisively be concluded that the aforesaid entry (iii) does not cover the activities of the Appellant. On the other side, the entry (iiia) of the amended Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 squarely covers the Appellant's activities as the gaming zone operated by the Appellant in the mall's closed premises are nothing but the amusement facilities as per the definition of the amusement facility provided under section 65(B)(9) of the erstwhile Finance Act, 1994, which is being reproduced herein below:

'(9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;'

29. Applying the provision of the aforesaid definition of the amusement facility in the present case, it is clearly revealed that the provision of the fun or recreation by the



Appellant by means of amusement rides and gaming devices deployed in the covered area of the mall premises, which can reasonably be construed as amusement arcade as has been established above, is nothing but the amusement facility.

30. In view of the above findings, it is perspicuous that the gaming zone operated by the Appellant in the mall would be covered by entry (iiia) of Sr. 34 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 1/2018 – C.T. (Rate) dated 25.01.2018, and would accordingly attract GST at rate of 28% (CGST @14% + SGST@14%).

Now, in view of the above deliberations, we pass the following order:

ORDER

We, hereby, uphold the ruling pronounced by the Advance Ruling Authority, wherein it was held that the gaming zone operated by the Appellant in the mall premises would attract GST at the rate of 28%(CGST @14% + SGST@14%) in terms of the entry (iiia) of Sr.34 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 1/2018 –C.T. (Rate) dated 25.01.2018.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

- Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C. Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Commissioner CGST, Navi Mumbai.
6. The Jurisdictional Officer
7. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
8. Office copy.