

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR  
THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK,  
NEHRU COLONY, DEHRADUN-248001

PRESENT:

Shri S.H Hasan (CGST Member)

Smt.Sowjanya (SGST Member)

The ~~27~~ day of February, 2019

Appeal No. a)UK/GSTARA02/10/13-02-2019

b)UK/GSTARA03/08/23-01-2019

1.	Name and Address of Appellant	a) M/S Kundan Mishthan Bhandar. b) Harshvardhan Pande AC (CGST) Jurisdictional Officer.
2.	Appeal No/Date	UK/GSTARA02/10/13-02-2019 UK/GSTARA03/08/23-01-2019
3.	Order No.	04 / 18-19 / 27-02-19
4.	Jurisdictional Officer	CGST Haldwani Div/State Sector- AC Ramnagar
5.	Date of Personal hearing	13-02-2019
6.	Concerned Officer	Smt Preeti Manral(Dc Tax Review State tax)
7.	Appellant Represented by	a)Shri DC Kandpal Superintendent CGST Range-3 Ramnagar. b)Shri Ashwarya Sharma (Advocate)
8.	Date of Reg.of Appeal	UK/GSTARA02/10/13-02-2019 UK/GSTARA03/08/23-01-2019

**Order**  
**(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017  
and Uttarakhand Goods and Service Tax Act, 2017)**

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttarakhand Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UKGST Act") by M/s Kundan Mishthan Bhandar, Ramnagar, Nainital, Uttarakhand (hereinafter referred to as the "1st Applicant") against the Advance Ruling Order No.09/2018-19 dated 22.10.2018 by the Authority for Advance Ruling, Uttarakhand in an application made by them. An appeal has also been filed by the jurisdictional CGST officer, Haldwani (hereinafter referred to as the 2nd Applicant) against the said ruling.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UKGST 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 UKGST Act.

**BRIEF FACTS OF THE CASE**

1. In the instant case the Party vide their application under sub-section (1) of Section 97 of the CGST/SGST Act, 2017 sought an Advance Ruling on:

(a) whether supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from a 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 etc commonly known as snacks, cold drinks, ice creams 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;

(ii i) 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



2. Following the personal hearing given to the applicant on 28.08.2018, the members of the Advance Ruling Authority for the state of Uttarakhand, gave the following ruling:

- (i) The supply shall be treated as supply of service and sweet shop shall be treated as extension of restaurant;
- (ii) 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;
- (iii) All the items including takeaway 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.

#### 1<sup>st</sup> Applicant's GROUND\$ OF APPEAL

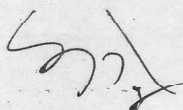
Aggrieved by the said order passed by the Authority for Advance Ruling for the State of Uttarakhand, the party has filed the instant appeal, on the following grounds:

1. The Advance Ruling Order having been passed on 22.10.2018, the party was required to file the appeal before the Appellate Authority For Advance Ruling on or before 27.11.2018 (within one month of passing of the order). However, the party has been able to file the instant appeal after a delay of 26 days, and has requested to the Appellate Authority for condoning the delay quoting the reasons as under:

(i) The accountant of the appellant Mr. Nandan who received the copy of Ruling on 28.10.2018 went on leave for a week after receiving the copy of Ruling and kept the same with him during that period;

(ii) Further, I, Partner of the firm is suffering from High Blood Pressure for a long time and is advised to take rest from time to time due to my medical condition because of which I am unable to regularly sit at the place of business. Due to the same I was not going to business premises between 5<sup>th</sup> November 2018 to 27<sup>th</sup> November 2018 since I was under treatment at Hospital and was advised to take rest.

2. That the Impugned ruling passed by the UAAR was a non-speaking order and thus liable to set aside.



In order to bolster the argument the party relied upon the following judgments:

- (i) Delhi High Court in the case of T.T. Ltd. VS Union of India [2017 (349) E.L.T.130(Del)];
- (ii) Nandhi Spinning Mills (P) Ltd s Commissioner of Central Excise, Salem [2018(8) G.S.T.L.103(Mad)];
- (iii) HVPNL Vs Mahavir [(2004)10 SCC 86];
- (iv) Tata Engineering & Locomotive Co. Ltd. Vs Collector Central Excise, Pune [2006(203)E.L.T.360(S.C.)] etc.

3. That mere supply of food items is a transaction of supply of goods only and concept of composite supply is not applicable.

In order to bolster the argument the party relied upon the following judgments:

- (i) Cochin State Power & Light Corporation Ltd. Vs State of Kerala [AIR 1965 SC 1688]
- (ii) East India Hotels Ltd Vs Union of India [2001 taxmann.com 2168(SC)]
- (iii) Madanlal Fakirchand Dudhelia VS Shree Changdeo Sugar Mills Ltd.[AIR 1962 SC 1543];
- (iv) J.K. Cotton Spinning & Weaving Mill VS State of UP [AIR 1961 SC 1170];
- (v) Nasiruddin VS State Transport Appellate Tribunal [AIR 1976 SSC 331];
- (vi) State of M.P. VS Narmada Bachao Andolan [2011 7 SCC 639]; etc.

4. That the guidance for classification can be taken from statutes in pari-materia and assistance from earlier statutes.

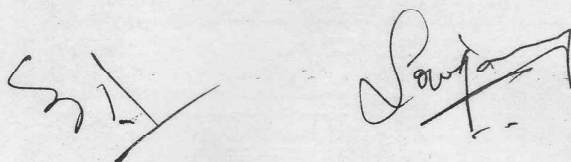
In order to bolster the argument the party relied upon the following judgments:

- (i) Bengal Immunity Co. Ltd Vs State of Bihar [AIR 1955 SC 661]
- (ii) Federation of Hotels & restaurants Association of India Vs Union of India [(2016) 72 taxmann.com 161 (Delhi)];
- (iii) New India Sugar Mills Ltd. Vs Commissioner of Sales Tax, Bihar [AIR 1963 SC 207];
- (iv) Kanwar Singh VS Delhi Administration [AIR 1965 SC 871];
- (v) Motor Owners Insurance Co. Ltd Vs J. K. Modi [AIR 1981 SC 2059];
- (vi) Ambica Quarry Works Vs State of Gujarat [AIR 1987 SC 1073].; etc.

5. That the Sphere of restaurant services should be understood in its 'commercial sense'.

In order to bolster the argument the party relied upon the following judgments:

- i) Collector of Central Excise Pune Vs dai Chi karkaria Ltd. [AIR 1999 SC 3234]
- (ii) London & North-Eastern Railway Co. Vs Berriman [1946 1 ALL ER 255 (HL)];
- (iii) Indian Aluminum Cables Ltd. Vs Union of India [1985 3 SCC 284]





(iv) Dunlop India Ltd Vs Madras Rubber Factory Ltd. Vs Union of India [AIR 1977 SC 597]; etc.

6. That the deeming provision shall be understood in a restricted manner.

In order to bolster the argument the party relied upon the following judgments:

- (i) CIT Vs Urmila Ramesh [AIR 1988 SC 2640];
  - (ii) State of Trav-co Vs Shanmugha Vilas Cashewnut Factory, Quilon [AIR 1953 SC 333];
  - (iii) CIT Bombay City II Vs Shakuntala [AIR 1966 SC 719];
  - (iv) Vodaphone International Holdings BV Vs Union of India [2012 6 SCC 613]; etc
7. That taxing statutes must be construed strictly.

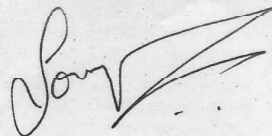
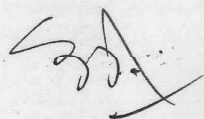
In order to bolster the argument the party relied upon the following judgments:

- (i) A.V. Fernandes Vs State of Kerala [AIR 1957 SC 657];
  - (ii) CIT, Bombay Vs Provident Investment Co. [AIR 1957 SC 664];
  - (iii) Sales Tax Commissioner Vs Modi Sugar Mills [AIR 1961 SC 1047]
8. In light of the afore-mentioned the party has prayed to set aside the impugned ruling passed by the UAAR and to declare the following:-

- 1. Supply of pure food items such as sweetmeats, namkeens, cold drinks, and other pre-cooked or pre-packed edible items from a sweet shop which also runs a restaurant is a transaction of supply of such individual goods;
- 2. The rate of tax on Pure Food items as mentioned above from a sweet shop shall be the individual rate of GST as may be applicable from time to time to such items with benefit of Input Tax;
- 3. Any item or take away ordered or consumed within/from restaurant shall be considered as supply of restaurant service on which rate of GST of restaurant service shall apply and benefit of input tax shall not be available.

### 2<sup>nd</sup> Applicant's GROUNDS OF APPEAL

Aggrieved by the said order passed by the Authority for Advance Ruling for the State of Uttarakhand, the Concerned Jurisdictional Officer of CGST, Haldwani, has filed the instant appeal, on the grounds that decision and interpretation to treat combination of supply of service on the basis of nature of establishment i.e. principal supply by a restaurant and incidental or auxiliary supply by the mithai shop is faulty and untenable as supply whether composite or mixed will be determined on the basis of satisfaction of the conditions/ingredients in the definition of 'Composite supply' or 'mixed supply' under section 2(30) and 2(74) respectively of the CGST Act.



Accordingly, the issue needs to be decided on the basis of individual supply and its constituents.

### **PERSONAL HEARING**

An opportunity for personal hearing was granted to the appellant on 13.02.2019 which was attended by Shri Ashwarya Sharma, Advocate, M/s Kundan Mishthan Bhandar, Ramnagar, Nainital. During the course of the personal hearing Shri Ashwarya Sharma reiterated the points covered in the grounds of appeal. He further stated that items sold from the sweet meat shop should not be covered under composite supply of restaurant services. The shop and restaurant are clearly demarcated and they are two separate areas. They further referred to GST law wherein, the supply of goods as transfer of title and supply of services are separately covered and they have to be interpreted accordingly. They also referred to the GST council press release dated 22.12.2018, wherein, they have clarified that it is not the nature of establishment but the nature of supply which is the decisive factor. In the light of submissions they stated that the Advance Ruling be set aside and the supply from the shop should not be covered under the restaurant services.

From the CGST side, Shri D.C. Kandpal, Superintendent appeared for personal hearing. He stated that in case of mixed supply from the shop, such as aerated water, chocolate and sweets sold as a package, the highest rate of duty for a particular item in the package would apply for the entire package.

### **DISCUSSIONS AND FINDINGS**

We have carefully gone through the ruling and the records of the issue as well as the submissions made at the time of personal hearing.

Main appeal memorandum against Advance Ruling Order No. 09/2018 dated 22.10.2018 was submitted by the party on 24.12.2018, with an application for Condonation of Delay, so this appeal could not be registered. Again, another appeal memorandum against the same order no. 09/2018 dated 22.10.2018 was filed by Jurisdictional Officer CGST on 17.01.2019, which on completion of documents, was registered on 23.01.2019, as appeal number UKGSTARA03/23.01.19.

On giving an opportunity of personal hearing in both appeals memorandum on date 13.02.2019, delay condoned in main appeal, and the appeal is registered as UKGSTARA02/10/13.02.19.



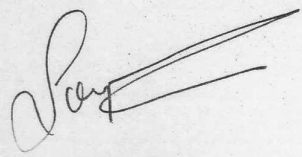



At the very outset, we find that the applicants are running sweetshop and a restaurant in two distinctly marked separate parts of the same premises and are also maintaining separate accounts as well as separate billings for the two types of business. The goods sold from the sweetshop are being billed exclusively as sweetshop sales whereas the goods supplied from the restaurant are billed under restaurant head. In such a situation, nature of the business establishment making supply of food, drinks and other articles for human consumption will not determine whether the same is a supply of goods or services but will depend on the constituents of each individual supply and 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.

'Composite Supply' is defined as "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;

Thus when the goods such sweets, namkeens, cold drinks and other edible items are supplied to customers in the restaurant or as takeaways from the restaurant counter and which are being billed under restaurant sales head should 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 this case.

All goods which are supplied to customers through sweetshop counter have no direct or indirect nexus with restaurant service. Anyone can come and purchase any item of any quantity from the counter without visiting the restaurant. The billings of such sales are also done separately. Thus such sales, by no stretch of imagination, can be clubbed with restaurant service. These sales do not satisfy the basic requirement of 'composite supply' i.e. 'being naturally bundled and supplied in conjunction with each other'. These sales are completely independent of restaurant activity and will continue even when the restaurant is closed, either temporarily or permanently. Hence such sales will be treated as supply of goods with applicable GST rates on the items sold. Input credit will be allowed on such supply.



## RULING

In view of the foregoing discussions and findings, we pass the following ruling-

- (i) The ruling no. 08/2018-19 dated 22.10.2018 made by the Authority on Advance Rulings for the State of Uttarakhand is set aside.
- (ii) Sale of sweets, namkeens, cold drinks and other edible items through restaurant will be treated as 'composite supply' with restaurant supply being the principal service. Existing GST rates on restaurant service will also be applicable on all such sales and no input credit will be allowed.
- (iii) 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 credit will be allowed on such supply.
- (iv) The applicant should maintain separate records for restaurant and sweetshop with respect to input and output and billings as well as other accounting records should also be separately maintained.

(S.H. HASAN)  
CGST MEMBER

(SOWJANYA)  
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

Copy To:- 8718(1)/Dt- 28/02/2019

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Concerned Officer, State Tax, Dehradun.
6. Appellant Jurisdictional Officers CGST, Division Haldwani
7. Appellant M/S Kundan Mishthan Bhandar, Ramnagar, Nainital.
8. Guard File.

Registrar  
AAAR Uttarakhand  
अपीलीय प्राधिकारी  
28/02/19