

Appellate Authority for Advance Ruling for Goods and Service Tax

Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Order No. 02/AAAR/ 12 /10/2018

Dated: 1210.2018

Before the Bench of :-

Shri S.H. Hasan, Member

Smt. Kamini Chauhan Ratan, Member

GSTIN Number	09AAACK5505F1ZS
Legal name of the Applicant	M/s. Khandelwal Extractions Ltd.
Trade Name of the Applicant	M/s. Khandelwal Extractions Ltd.
Registered address/Address provided while obtaining user ID	51/47, 3 rd Floor, Keshwarwani Bhawan, Naya Ganj, Kanpur, Uttar Pradesh-208001
Order of Advance Ruling Against which the appeal is filled	Order No.7 dated 25.05.2018 by the Authority of Advance Ruling, Uttar Pradesh

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

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s. Khandelwal Extractions Ltd., 51/47, 3rd Floor, Keshwarwani Bhawan, Naya Ganj, Kanpur, Uttar Pradesh-208001 (hereinafter referred to as the “Applicant”) against the Advance Ruling Order No.7 dated 25.05.2018 by the Authority for Advance Ruling, Uttar Pradesh.

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

Brief Facts of the Case

1. M/s. Khandelwal Extractions Ltd., 51/47, 3rd Floor, Keshwarwani Bhawan, Naya Ganj, Kanpur, Uttar Pradesh-208001 (here in after called the applicant) is a registered assessee under GST having GSTN : 09AAACK5505F1ZS.
2. The Applicant is engaged in the business of purchases of Mahua oil cake / Rice Bran for extraction of oil through solvent extraction Process.
3. The Applicant in his application before the Authority on Advance Ruling (hereinafter referred to as AAR), had raised following issues for determination by the Authority –
 - a) Whether Mahua De-oiled cake/ De-oiled Rice Bran, being used as an ingredient of Cattle Feed, Poultry Feed and other animal feeds is ‘Waste generated’ during the Solvent Extraction process?
 - b) Whether the applicant is eligible to get entire tax input credit of GST paid on purchase of Mahua Oil Cake/Rice Bran Oil cake used in the manufacture of solvent extracted oil?
4. During the personal hearing Shri Pawanshree Agrawal and Shri Vaibhav Dixit, Advocates had appeared before the AAR on behalf of the applicant. In the written submission, the applicant, while describing the manufacturing process, had submitted that -

- a. They purchased Mahua oil cake / Rice Bran for extraction of oil through solvent extraction process in which oil is the primary product and De-oiled Mahua Cake /De-oiled Rice Bran is obtained as by-product. The raw material used by the applicant are classified under the following HSN Code:-

Oil seed - 1207

Oil Cake – 2306

Rice Bran – 2302

- b. After processing, product manufactured by using the above said raw material is solvent Extracted oil, which is classified under HSN 1515.
- c. The solvent extracted oil is obtained after palletisation and various other processes. Mahua oil cake / Rice Bran is fed to solvent Extraction Plant for extraction of oil through Hexane.
- d. Hexane goes to solvent recovery system balance. De-oiled Mahua Cake /De-oiled Rice Bran is obtained as a by-product, which are wholly used as ingredient of fish meal/cattle feed.
- e. Mahua De-oiled Cake is used for fish feed, fish farming and other aquatic uses, which is wholly used for the above purpose. De-oiled Rice Bran is used for cattle –Feed, Poultry Feed and other animal Feeds, which are wholly used for the above purpose.
- f. During the process of the oil extraction, a huge quantity of de-oiled cake is also produced (almost to the 65%-70% of the raw material).
- g. This de-oiled cake is actually a waste for the applicant since they are only registered under the law for production of edible oil.
5. The said Application of the party was forwarded to the jurisdictional officer, CGST and CX, Kanpur and they submitted their views as under:-

“Mahua de-oiled cake has been described rich in sugars, nitrogen & proteins but also there is presence of some toxic saponins which limits its usages as fish or cattle feed. However, on mixing further with some other vegetable and cereal waste its usage in cattle feeding and fish feeding are usual in practice. De-oiled rice bran has been seen in its usage in largely cattle feed, poultry & fish feed are usual in practice. So far that purpose it can be classifiable in 2309 and De-oiled rice bran has been seen in its usage in largely cattle feed, poultry and fish feed and is appears as classifiable in Chapter 2308. The input credit of GST paid on raw materials is not allowable in the present case since; the party is manufacturing taxable as well as exempted supply.”

6. On the basis of the facts disclosed in the application, the oral and written submissions made at the time of personal hearing, documents produced during the personal hearing and the views submitted by the jurisdictional Officer, CGST and CX, Kanpur, the Authority for Advance Ruling vide their Order 07 dated 25.05.2018 passed the point wise ruling as follows:-

- a) Whether Mahua De-oiled cake/ De-oiled Rice Bran, being used as an ingredient of Cattle Feed, Poultry Feed and other animal feeds is 'Waste generated' during the Solvent Extraction process?

Ans. – Mahua De-oiled cake/ De-oiled Rice Bran is a by-product occurred during the Solvent Extraction process, which is used as an ingredient of Cattle Feed, Poultry Feed and other animal feeds.

- b) Whether the applicant is eligible to get entire tax input credit of GST paid on purchase of Mahua Oil Cake/Rice Bran Oil cake used in the manufacture of solvent extracted oil?

Ans. – The Input credit of GST paid on purchase of Mahua Oil Cake/Rice Bran Oil cake used in the manufacture of solvent extracted oil is partially allowed as per process/formula prescribed in the Chapter V (INPUT TAX CREDIT) of GST Rule, 2017, because, the applicant manufacturing both taxable and exempted goods by using raw materials viz. Mahua De-oiled cake and De-oiled Rice Bran. Further, if common inputs are used for both taxable and exempted supplies, the applicant is required to reverse the credit proportional to the amount of credit pertaining to the exempted supplies immediately.

Being aggrieved with the Order 07 dated 25.05.2018, M/s. Khandelwal Extractions Ltd., 51/47, 3rd Floor, Keshwarwani Bhawan, Naya Ganj, Kanpur, Uttar Pradesh-208001 filed the present appeal application, with the grounds of appeal contained in Annexure- 'B' of the said appeal application.

The grounds for appeal are as under:-

- i. Advance Ruling Authority has wrongly denied the settled jurisprudence.
- ii. Advance Ruling Authority was bound by the judicial discipline laid down by the Hon'ble Apex Court.
- iii. Advance Ruling Authority has failed to discuss the fact if the emergence of 'waste' is to be treated as supply at all.

- iv. De-oil Cake is generated as waste and cannot be treated as a 'supply by way of manufacture'.
- v. Application of section 17(2) CGST Act, 2017 does not extend to involuntary generation of 'Waste'.
- vi. Marketability is not a criterion to classify an item as 'waste'.

The personal hearing in the matter was fixed on 26.09.2018 vide letter C.No. V(30)CCO/LKO/Tech/19/Appeal/ Advance Ruling/KEL/2018/2123 dated 20.09.2018.

Personal Hearing

None appeared for personal hearing. Appellant vide their e-mail letter dated 24/25.09.2018 requested for postponement of the date of personal hearing to some other date in month of October due to non availability of their counsel.

As the Appellate Authority of Advance Ruling Uttar Pradesh consist of a member of the Central GST and a member of State GST and the appeal is to be decided in a time bound manner, it is not possible to extend the date of personal hearing to another date. So the appeal is being taken up for consideration based on the facts and documents available on record.

Discussion and Findings

We observe that the appeal is mainly based on two major points viz.

- (i) that the AAR was wrong in not following the precedent decisions of the higher judicial forum on the premise that the said cited decisions were of pre GST regime, hence were inapplicable to the present context.
- (ii) That the de-oiled cakes were unintended products of their main manufacturing activity of manufacture of rice bran oil/mahua oil and were in fact technological necessity and therefore were 'waste products' not exigible to GST.

The appellant in his his appeal application has prayed for:-

- (a) setting aside/modifying the order of AAR.
- (b) The term waste is not defined in CGST Act 2017 and therefore the case laws of Apex court and Higher Courts are having binding value on the scope of the term.



- (c) The 'Waste' generated during the manufacturing process cannot be treated as 'supply' in light of judicial pronouncements since it is mere technological necessity.
- (d) The provisions of Section 17 and more specifically sub-section (2) of CGST Act 2017 are inapplicable.
- (e) Entire Input Credit should be allowed since the whole of it is being used in the manufacture of solvent extract oil.

At the very outset, we concede the contention of the appellant that the precedence value of the decisions of Higher judicial forum is not lost only on the ground that relevant laws have changed. The principles laid down by the higher judiciary in arriving at a decision must be followed as a matter of judicial discipline, if the broad parameters of the case before the lower authority are in general consonance with cited case laws. The decisions of higher judiciary become inapplicable only if the issues are different or the matter has been specifically distinguished by an act of the legislature. So, to this extent, the AAR has erred in as much as he has summarily ignored the citations only because they were delivered before the advent of the GST Act. The AAR authority should have given reasoned findings about their inapplicability.

Now, coming to the specifics of the case, we find that the case laws cited by the appellant are all relating to waste/by-products and in support of their primary plea that the de-oiled cake is a waste/by-product and a mere technological necessity. For the reasons as are being discussed herein below, we are of the view that the de-oiled cake is neither a waste nor a by product of mere technological necessity and hence all the cited case laws become irrelevant to the present case. In fact, two equally and completely commercially viable products emerge during the manufacturing process of solvent extraction viz. the oil and the de-oiled cake. Both these products are sold by a company with equal emphasis and both are commercially lucrative to the solvent extractor. The Id. Counsel has tried to support his claim of de-oiled cake being waste by insisting that its production is 'unintended' and that it is 'technological necessity'. We find these terms inapplicable since after the oil is extracted from the pellets, the manufacturing process does not end at that point. In fact, the pellets from which oil has been extracted, further undergo Desolventising process i.e. separation of normal-Hexane from the De-oiled bran subsequent to which the de-oiled bran is chemically tested for their oil and silica content to meet clients' specifications and finally it is sent to the bagging section for packing into branded unit packaging. It is unimaginable that investment into a desolventising plant and bagging unit will

be made for a product which is allegedly 'unintended' or 'mere technical necessity'. In fact the de-oiled cake is a very much intended product in as much as it may affect the overall financial health of the company. **This is reflected in the Director's Report of the Balance Sheet for 2018-19** (available on their official website) *inter alia* – "***Further, depressed demand of de-oiled cakes have changed the industrial scenario altogether. These factors have affected the company's working.***" Thus, through an elaborate process, chemical testing and packing, the de-oiled cakes are finally manufactured made marketable. So, the appellant's contention that the de-oiled cake is not manufactured but is generated during the course of manufacture of extracted oil, is contrary to facts. The cited decisions of Balarampur Chini Mills and Hindalco Industries Ltd., accordingly, are inapplicable as in the present case de-oiled cake is obtained after desolvetising process on which chemical test is done and are then packed in unit containers, all of which come under the ambit of 'manufacture'.

Hon'ble Supreme Court, in the case of Commissioner of Central Excise vs. Goyal Proteins Ltd. [2017 (355) ELTA27 S.C.] has maintained the order of Hon'ble High Court, Rajasthan upholding the decision by Hon'ble CESTAT of remanding the case with direction to accept the party's offer to reverse entire input credit used during manufacture through solvent extraction resulting in the emergence of de-oiled cake and gum.

Further, the issue of de-oiled cake not being 'waste' has reached finality in the case of **State of Karnataka vs. M.K.Agro Tech (P) Ltd. [2017 (6) G.S.T.L 125 (S.C.)]** and the decision is squarely applicable to the present case as the broader facts and principles are identical. The Hon'ble Apex Court upheld the appellant State's right to allow only partial rebate of input credit since the party was not paying any VAT on de-oiled cake. In arriving at the decision the Hon'ble Court considered two factors viz. the de-oiled cake was 'goods' and 'sale' was involved. In fact their decision was based on the major factor that the sale of de-oiled cake formed a significant part of revenue of the party. The relevant part, *inter alia*, is as follows –

"....Here is a case where the respondent assessee has paid input tax while purchasing the raw material, namely, sunflower oil cake. This has been used for extraction of sunflower oil. Even after extracting the sunflower oil what remains is de-oiled cake which, no doubt, is a by-product. However, it is not to be discarded as waste. Rather, it is not only marketable as "goods" but fetches significant sale price. The ratio of sale of sunflower oil and de-oiled cake is

55:45. The respondent-assessee is, thus, able to generate 45% revenue from the sale of de-oiled cake. However, no output tax is paid on the sale of this item since this item is exempted from payment of VAT under Section 5 of the KVAT Act. Section 17 is meant to take care of these situations, which is the purpose behind that provision. Approach of the High Court, in fact, defeats the said purpose. Therefore, there was no reason for departing from the principle of literal construction in a taxing statute. It is settled proposition of law that taxing statutes are to be interpreted literally [See Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana - (2014) 6 SCC 444, State of Madhya Pradesh v. Rakesh Kohli & Anr. - (2012) 6 SCC 312 and V.V.S. Sugars v. Government of Andhra Pradesh & Ors. - (1994) 4 SCC 192].”

The facts of the case are exactly similar in as much as the de-oiled cake is manufactured, chemically tested and packed in branded unit packaging and marketed for considerable commercial consideration. Hence they are ‘goods’ and sale definitely takes place. So, the above decision is specifically applicable.

Definition of ‘supply’ Under section 2(92) read with **section 3** ‘supply’ includes *all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Schedule I specified the supply.*

The word **Supply** replaces the operative term **sale**. Thus, no scope has been left for any confusion and the definition includes every term which is in any form liable to be termed as sale. Even the supply which is made or agreed to be made without a consideration will also amount to sale.

Supply includes

- (a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- (b) importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and
- (c) a supply specified in Schedule I, made or agreed to be made without a consideration

Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

Activities which are not Supply

Activities and transactions specified in Schedule III –

- Services by an employee to the employer in the course of or in relation to his employment;

- Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- Actionable claims, other than lottery, betting and gambling
- Sale of land / Sale of building after occupation or completion will not attract GST. Thus, sale of building before completion or before occupancy will attract GST

Such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council.

Thus in light of the above decisions the contention of the appellant that de-oiled cake is waste, hence they cannot be treated as 'supply' fails and following the judicial principles, the above referred decisions are very much applicable to the present case and therefore the sale of de-oiled cake is undoubtedly 'supply'. Activities which are not supply are categorically outlined in the GST Act itself. Anything not covered by the exclusion will fall under the ambit of supply. Therefore, it is hard to comprehend the rationale of the appellant in not considering de-oiled cake as supply, since the definition (as quoted above) leaves no ambiguity that anything that is sold with or without consideration, is supply. Having settled the issue of sale of de-oiled cake being supply, it can be concluded that Section 17(2) of the GST Act 2017 is very much applicable. But first it has to be decided as to whether the specific items are exempted.

After going through the tariff we find that De-oiled Rice Bran is covered by Chapter sub-heading 2302 and it has been fully exempted from CGST vide Notification No.07/2018-CT(R) dated 25.01.2018. So, in terms of Section 17(2) of CGST Act 2017, the input credit attributable to the supply of this exempted goods i.e. de-oiled rice bran has to be reversed by the appellant.

The appellant has claimed that the de-oiled mahua cake is primarily used as fish feed and therefore should fall under the specific Chapter sub-heading 23099039 (Fish meal in powdered form-other). We have perused various literatures and information about de-oiled mahua cake. It is found that these cakes have a very high saponin content which makes them unsuitable for animal or fish feed in general. Rather, these cakes are primarily used in pisciculture (fish cultivation) as weedicides (to kill and eradicate unwanted vegetation growth) and as piscicides (to eradicate predatory fishes) and as fertilizers in agriculture. Its role as fish feed, if any, is very limited as compared to its general use as fertilizer and weedicides. Accordingly, we do not agree with the contention of the


appellant regarding its classification under 23099039. In fact the de-oiled mahua cake cannot fall under Chapter 23 of the tariff which comprises "Residues and waste from the food industries; prepared animal fodder". Since, as discussed in the foregoing paragraphs, it is neither a residue nor a waste nor a prepared animal fodder. Thus, there is no specific entry for this item or similar product anywhere in the tariff and therefore it should be classified under the residuary entry serial number 453 of the Notification No. 01/2017-CT(R) dated 28.06.2017 [*"Any Chapter-Goods which are not specified in Schedule I, II, IV, V or VI"*] having a GST rate of 18% (CGST @9% + SGST @9%). Hence, the appellant is required to pay GST @18% on the supply of de-oiled mahua cake and is therefore entitled to avail input tax credit.

Ruling

In view of the foregoing discussion and findings we hereby modify the Ruling no.07 dated 25.05.2018 of the Authority on Advance Ruling to the extent that-

- (i) Input Credit attributable to the supply of de-oiled rice bran cake (exempted supply) is to be reversed by the appellant in terms of Section 17(2) of the CGST Act 2017; and
- (ii) GST @ 18% is payable on supply of de-oiled mahua cake with consequent allowing of input credit in terms of Section 16 of the CGST Act 2017.


(Shri S.H. Hasan)
Member for AAAR
CGST


(Smt. Kamini Chauhan Ratan)
Member for AAAR
SGST

To,
M/s. Khandelwal Extractions Ltd.,
51/47, 3rd Floor, Keshwarwani Bhawan,
Naya Ganj, Kanpur, Uttar Pradesh-208001

APPELLATE AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 02

Date: 12/10/18

Copy to –

1. The Joint Commissioner, CGST & Central Excise, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Joint Commissioner, CGST & Central Excise, Kanpur
4. Through the Additional Commissioner, Grade – I, Commercial Tax, Kanpur to jurisdictional tax assessing officers.