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. 04/AAAR/ 10 / 3 /2019 Dated: 18/3/2019

Before the Bench of:-

Shri Rajeev Tandon, Member

Smt. Amrita Soni, Member

GSTIN Number	09AAACI8129B1ZS
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, 3rd Floor, Kesharwani 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)

These proceedings are the outcome of the directions of Hon'ble High Court Allahabad, given in a order issued by the court (writ tax no. 1605 of 2018) dated 14.12.2018, court ordered that the matter is remitted to the Appellate Authority to decide the petitioner's appeal afresh, as expeditiously as possible.

Brief facts of the case from the beginning till date are as follows:-

1. The Applicant in his application for Advance Ruling raised the issues as follow:-

a) Whether Mahua De-oiled cake/ De-oiled Rice Bran being used as an ingredient of Cattle Feed, Poultry Feed and other animal feeds and 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?

2. On the basis of the facts disclosed in the application, the oral and written submission made at the time of personal hearing, documents produced during the personal hearing and the views submitted by the jurisdictional Officer, CGST and CX, Lucknow on the issue, 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 and 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.

3. Being aggrieved with the Order no. 07 dated 25.05.2018, M/s. Khandelwal Extractions Ltd., 51/47, 3rd Floor, Kesharwani Bhawan, Naya Ganj, Kanpur, Uttar Pradesh-208001 preferred an appeal before the AAAR on the grounds as under--

i. Advance Ruling Authority has wrongly denied the entire input tax credit and on 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'.

4. Applicant was granted personal hearing on 26.09.2018, applicant requested for the adjournment of the hearing but due to the time bound nature of the hearing it could not be accepted.

5. Written submissions of the applicant was taken in to consideration while deciding the case ex – parte, ruling was given as under:-

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.

6. The ex-parte order was challenged before Hon'ble High Court Allahabad, vide writ tax no. 1605 of 2018 dated 14.12.2018 and the matter was remitted to the Appellate Authority to decide the petitioner's appeal afresh, as expeditiously as possible by the Court.

7. In compliance to the order of Hon'ble High Court personal hearing was granted to the applicant on 06.03.2019.

Personal Hearing

Mr. Amit Awasthi, Advocate on behalf of the party appeared for personal hearing.

During the oral submission they stated that they have already submitted their detailed written submission further they requested that they will submit some additional written brief on the subject 11.03.2019 and there is nothing more to add.

In addition to the written submission applicant also submitted a letter dated 13.03.2019 regarding Addendum & final submission, in which applicant clarified that the sole issue for the Appellant is only with regard to De- oiled Rice Bran and currently neither is there any issue with regard to classification of Mahua De-oiled Cake nor the Appellant is manufacturing the same.

Discussion and Findings

We observe that the issues placed before the Appellate Authority for advance ruling are:-

(i) Whether de- oiled mahua cake would merit classification under chapter 23069011 of the CGST Tariff or under the head 23069090 of the Tariff.

(ii) Whether in the first round of issue placed before the authority the chapter note to Chapter 23 of the GST Tariff shall have an overriding effect for exclusion of Mahua de-oiled cake from Chapter 2309.

(iii) Whether the Mahua De-oiled cake is an unintended generated waste/solid residuesarising due to technical necessity.

(iv) Whether the product falling under the specific entry, can it be over-ridden by residual entry.

(v) Whether the input tax credit of GST paid on purchase of Mahua oil cake, shall be cohesively allowed and

(vi) Whether the provision of Section 17(2) of the CGST Act, 2017 shall still apply when the classification under chapter 2306 stands final.

The appellant vide 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 are 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.

Now coming to the specifics of the case, we find that the case laws cited by the appellant is all relating to waste/by-products as is their main plea that the de-oiled cake is a waste and 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 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 ld. 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 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. 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 the technical position and 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 intended 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, Rajstahan 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 Karnatka 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 similar. 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]."

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, licence, 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 has been fully exempted from CGST vide entry no. 102A of 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.

As far as the classification of de-oiled mahua cake is concerned we find that the applicant have in their submission claimed that the same merits classification under specific entry under chapter 2306 and in no manner classification be resorted the residual entry because it would be against the principles of classification to deny the proper percentage and consign the product to the residuary item.

Before, we proceed further we come to chapter 23.06 which reads as under—

"Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 2304 or 2305 [other than cotton seed oil cake]"

Further, entry no. 2304 covers "oil-cake and other solid residues whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil whereas entry no. 2305 covers oil cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of groundnut oil.

From the above it is evident that the product de-oiled mahua cake is not covered under heading 2304 or 2305 as different products have been classified under the same. Accordingly, we find support in the claim of the noticee that 'De-oiled Mahua cake' is classifiable under heading 2306 of chapter 23 of Customs Tariff Act".

Since 5% GST is applicable on the goods falling under chapter heading 2306, under notf. No. 01/2017 Central Tax (rate) dated 28 June, 2017, as amended, the appellant is required to pay GST @5% on the supply of de-oiled Mahua cake accordingly entitled to avail input tax credit on the same.

We also find that in addition to the written submission applicant have also submitted a letter regarding Addendum & final submission, in which applicant clarified that the sole issue for the Appellant is only with regard to De- oiled Rice Bran and currently neither is there any issue with regard to classification of Mahua De-oiled Cake nor the Appellant is producing the same.

We find that the appellant had not disclosed the above fact either before the Authority for Advance Ruling or before the Appellate Authority for the said purpose in their earlier submissions. The Ruling at both the forums was given after taking the due consideration of the submission made by the appellant in writing and now it would not be justified and proper for us to consider the said stand of the appellant. Further, it is also not open for the appellant to deviate from his own stand at this juncture and raise such dispute with regards to his own submission on the issue. Accordingly, we find it improper to entertain the submission of the appellant requesting for a separate order in the matter.

Ruling

In view of the foregoing discussion and findings we hereby order as under:

(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 @ 5% is payable on supply of de-oiled mahua cake with consequently allowing the input credit in terms of Section 16 of the CGST Act 2017.

(Shri Rajeev Tandon)
Member for AAAR
CGST

(Smt. Amrita Soni)
Member for AAAR
SGST

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

APPELLATE AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 04 Date: 18/3/19

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.