

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. 09/AAAR/01/11/2019

Date: 01.11.2019

Before the Bench of:-

Shri Karnail Singh, Member

Smt. Amrita Soni, Member

GSTIN Number	09AGVPG1061E1ZF
Legal name of the Appellant	Rajeev Kumar Garg
Trade Name of the Appellant	M/s. Amar Food Products
Registered address/Address provided while obtaining user ID	14/310, Madan Mohan gate, Civil Lines, Agra, Uttar Pradesh 282 002.
Order of Advance Ruling Against which the appeal is filed	Order No. 32 dated 30.06.2019 issued 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. Amar Food Products, 14/310, Madan Mohan gate, Agra (hereinafter referred to as the "Appellant") against the Advance Ruling Order No.32 dated 30.06.2019 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. Amar Food Products, 14/310, Madan Mohan gate, Agra (here in after called the appellant) is a registered assessee under GST having GSTN: 09AGVPG1061E1ZF.

2) The appellant is engaged in running of General Minor Units (GMU) at Railway Platforms at which sale of packed food items, drink and cooked items is done.

3) The Appellant submitted application for Advance Ruling dated 03.04.2019, seeking ruling on the following questions:

i). Whether supply of food items at GMUs (General Minor Units) at Railway Platforms which include only counter sale of packed food items, drinks and cooked item shall be treated as **"Sale of Goods"** or **"Sale of Services"**?

ii). If it is sale of services, whether the whole revenue shall be taxed @ 5% without ITC under serial no. 7(ia) of notification no. 11/2017-CT (Rate) dated 28.06.2017 or assessee can opt to pay tax @ 18% with ITC under serial no. 7(ix) of that notification.

iii). If the assessee pays the taxes @ 5% under serial no. 7(ia), whether assessee can claim the Input Tax Credit (ITC) of GST paid on license fees to Indian Railway or IRCTC.

iv). If answer to question (iii) is negative. What will be the

consequences for wrong availing of ITC?

4) Appellant was granted hearing on 22.05.2019. Shri Gaurav Goyal, CA and Shri Amit Agarwal, Advocate, Authorized representatives appeared for hearing.

5) After going through the submissions of appellant, the Jurisdictional office, Authority for Advance Ruling ruled as under:-

i). *Supply of Food items at GMUs (General Minor Units) at railway platforms which includes only counter sale of packed food items, drinks and cooked item shall be treated as 'Supply of Services'.*

ii). *Whole revenue shall be taxed @ 5% without ITC under serial No. 7(ia) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.*

iii). *Appellant cannot claim the Input Tax Credit of GST paid on license fees to Indian railway or IRCTC.*

iv). *Question raised is out of purview of the mandate of Advance Ruling U/s 95(a).*

6) Being aggrieved with the Order no. 32 dated 30.06.2019, M/s. Amar Food Products, filed appeal application before us.

Grounds of appeal submitted by the appellant:

7) The appellant submitted the grounds of appeal as Annexure- "B". The grounds for appeal were as under:-

a) *The learned authority of advance ruling has erred in law and facts by holding that supply of foods items at GMUs (General Minor Units) at railway platforms which includes only counter sale of packed food items, drinks and cooked item shall be treated as "supply of Service"*

b) *The appellant craves leave to add, alter, amend or vary the grounds of appeal before or at the time of hearing.*

8). Appellant was granted personal hearing on 23.10.2019,

Personal Hearing

9) Mr. Abhinav Mehrotra, Advocate and Mr. Gaurav Goel, Chartered Accountant appeared in personal hearing on behalf of the appellant.

9.1) During the course of personal hearing they reiterated their written submission made vide letter dated 01.08.2019 and requested to submit some more documents within 02 days. The appellant, vide their email dated 28th October 2019, submitted the copy of letter पत्रांक: म.रे.प्र./वा./आगरा/खा.पा./प्लेटफार्म वेंडिंग परमिशन/2019 dated 15.04.2019 issued by the Sr. Divisional Commercial Manager, NCR, Agra, copies of some allotment letters and additional written submission dated 28th October 2019. In the additional submission dated 28th October 2019, the appellant submitted that their supply should be consider as "Supply of Goods" and not a Composite Supply/supply of service, because of following reasons:

a). At the GMUs, no service, like provision for waiters, service of food on tables, supply of free drinking water, sitting arrangements, air-conditioning, linen, crockery and cutlery, etc. is available. The supply is made at MRP without any escalation in the price.

b). Transaction under consideration involves transfer of property in movable goods. There are no restrictions as regard to the place of consumption, however there is no provision for any sitting arrangement, etc. as the point of sale is the counter of such GMU.

c). Only supply involved in the above transaction is that of supply of goods i.e. food items, no service element is involved in the instant transaction. Even if it is assumed that there is some portion of provision of service involved, the same is incidental to the principal supply.

d). The predominant element involved is that of sale of food item, in the present case, the consumer intends to buy and the applicant intends to sell. Thus, it is clear that there is only one activity which has taken place predominantly i.e. buying and selling of packed food items. The applicant does not intend to provide any sort of service to their consumers.

e). In the instant case, the supply has not been made by way of any service. The appellant's only intent is to sell the packed food items, etc.. Here again the

appellant submits that it is the pre-dominant intention of the supplier and the recipient of supply which must be the decisive factor in order to determine the nature of the supply.

f). In the instant case, the outlets of the applicant do not serve the food items to their customers on the table. Rather the same has to be collected by the customer themselves from the counter. Further, the appellant does not provide any sitting facility to the customers as well.

g). Accordingly, the activity of supply of food items in the outlet is purely a contract for supply of goods and the GST must be levied accordingly.

i). The appellant is the licensees of Indian Railway not of the IRCTC Ltd. All the tenders allotted to him are from Indian Railway.

j). Supply at major units at Railway platform includes service components also. Therefore, it is composite services, while, supply at GMUs does not include services. Therefore, it is not composite services, it is sale of goods.

k). As per para no. 18 of press release dated 22.12.2018, the nature of establishment will not decide whether supply is goods or service. It will rather depend on the constituents of each individual supply and whether same satisfies the conditions / ingredients of a composite supply or mixed supply.

l). The appellant is not allowed to serve foods at Railway coaches in terms of para no. 9(D) of North Central Railway letter dated 15.04.2019. The appellant is allowed to sell the food across the counter only. Therefore, there is no service component for supply at GMUs.

m). Scope of Notification no. 11/2017(R) is to provide the rate of tax on services only. It cannot classify any supply either as goods or services.

n). Accordingly, the appellant has requested that the supply at GMUs shall be considered as sale of goods not as sale of services.

9.2) The appellant has paid reliance on the following case laws in support of their claim:

- a). Kundan Misthan Bhandar (2019) 105 taxmann.com 364 (AAAR-Uttarakhand);
- b). Northern India Catrers Vs. Lt. Governor of Delhi { AIR 1980 SC 674};
- c). State of Himanchal Pradesh Vs.. Associated Hotels of India {1972 2 SCR 937};
- d). Govind Ram and ors. Vs. Sate of Rajasthan {AIR 1982 Raj 265};
- e). Sangu Chakra Hotels Private Limited Vs. State of Tamil Nadu {1985 60 STC 125}.

Discussion and Findings

10) We have gone through the submissions made by the appellant and examined the detailed explanation submitted by them. We observed that the appeal is mainly based upon the following points viz.

- A. The Authority of Advance Ruling has erred in law and facts by holding that supply of foods items at GMUs (General Minor Units) at railway platforms which includes only counter sale of packed food items, drinks and cooked item shall be treated as “supply of Service”.
- B. The supply made by appellant at GMUs should be considered as “Supply of Goods” not as “Supply of Service” and shall be taxed as per the Notification No. 01/2017-CT(Rate) with the benefit of ITC.
- C. The scope of Notification No. 11/2017-CT (Rate) is to decide the rate of Service, it cannot classify any supply as “Service”. Any supply shall be considered as service in accordance with Section 2(52), (102) of CGST Act read with Schedule II of CGST Act, 2017 not by Notification No. 11/2017-Ct (Rate).
- D. The appellant also placed reliance upon the ruling issued by the Appellate Authority for Advance Ruling-Uttarakhand, in case of M/s Kundan Misthan Bhandar.

11) The appellant vide his application has prayed for:

- i) To set aside /modify the impugned advance ruling passed by the Authority for Advance Ruling;

- ii) To grant a personal hearing;
- iii) To pass such further or other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

12) The first issue to be decided is whether supply of food items at GMUs (General Minor Units) at railway platforms which include counter sale of packed food items, drinks and cooked item shall be treated as "Sale of Goods" or "Sale of Services".

12.1) We observe that the appellant has been awarded License to set up General Minor Units (GMUs) at various railway platforms. The appellant, in his submission, has contended that the activity being provided by them should be consider as "Supply of Food" and not as "Supply of Service". However, we notice that as per the "Article 1- Scope of the arrangement" of "License Agreement" dated 29th April 2016 (submitted by the appellant before the Advance Ruling Authority), entered between Divisional Railway Manager (Commercial), NCR, Agra and the appellant:-

"1.1- the parties agree that the scope of services shall be principally to operate, manage and supply catering service on the GMU from the commencement date of operation which is agreed by the parties to be... (Commencement date)"

We find that the "Scope of Service" itself clearly spells the nature of activity as ***"operate, manage and supply catering service on the GMU"***. We observe that the agreement entered into between the appellant and the Divisional Railway Manager (Commercial), NCR, Agra, itself consider the activity to be undertaken by the appellant as "supply of catering service". Thus the contention of the appellant that they are involved only in counter sale of food is not tenable.

12.2) We also notice that as per the License Agreement dated 29.04.2016 the appellant has to seek prior approval of Railways for sale of items and can only supply those products which are approved by the Railways. Further, the Railways have the right to inspect/ audit of appellant's unit/records. The appellant is bound to follow the License Agreement in letter and spirit and the License Agreement clearly spells that the agreement is for "Supply of Catering Service".

12.3) The appellant has laid emphasis that they are involved only in across the counter sale and not permitted to supply the food items inside the railway coaches in terms of para 9 (D) of Sr. DCM, NCR, Agra letter dated 15.04.2019. However, we observe that said letter is issued to the appellant specifying the terms & conditions for "Platform Vending." Further, the terms & Conditions for "Platform Vending" have been defined in para 5 of the said letter dated 15.04.2019, which is as under:

" 5. प्लेटफार्म वेंडिंग करते समय अधिकृत वेंडर के पास लगभग 2X3 फिट से अधिक बड़ा बास्केट नहीं होने चाहिए, उस पर लाइसेंसी का नाम, स्टाल संख्या, प्लेटफार्म संख्या, दर एवं मीनू और फूड सेफ्टी लाइसेंस की प्रति चिपकाना आवश्यक है। इसके अलावा चाय/काँफ़ी का थर्मस जिसकी क्षमता ०५ से १० लीटर के मध्य ही हो इससे अधिक नहीं होनी चाहिए। उस पर भी लाइसेंसी का नाम, स्टाल संख्या, प्लेटफार्म संख्या, दर एवं मीनू और फूड सेफ्टी लाइसेंस की प्रति चिपकाना आवश्यक है। वेंडिंग के दौरान वेंडर बास्केट /थर्मस स्टाल से लेगा एवं बिक्री उपरांत स्टाल पर ही जमा करेगा वेंडर को बास्केट /थर्मस को प्लेटफार्म पर रखने की अनुमति नहीं होगी। "

From the above, we observe that the contention of the appellant that they are involved only in counter sale is not correct. From para 5 of the letter dated 15.04.2019 it is evident that the vendors of the appellant are allowed to take their goods upto the customers, at railway platforms, away from their stalls, in prescribed sized baskets/flasks. Thus we observe that the activity being undertaken by the appellant at GMU is entirely different from across the counter supply and the service provided by them is rightly classified under "Catering Service".

12.4) We further observe that Notification No.11/2017- Central Tax (Rate) dated 28.06.2017, which specify the rate of central tax, on the intra-state supply of service" was amended vide Notification No. 13/2018-Central tax (Rate) dated 26th July 2018 and an entry at Sl. No. 7(ia) was added, which is as under:

"Supply, of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd., or their licensees, whether in trains or at platforms."

We noticed that after addition of entry no. 7(ia) in the Notification No. 11/2017, the issue, regarding classification of the supply of goods, by the Indian Railways, Indian Railways Catering and Tourism Corporation Ltd., or their licensees, whether in trains or at platforms, has attained finality that the same would be classified as "Supply of Service".

We observe that it is not the duty of the Authority either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The Authority cannot add words to a statute or read words into it which

are not there. Hence, it is the bounden duty and obligation to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated. Thus we are in unison with the Advance Ruling Authority that the activity provided by the appellant correctly falls under entry no. 7(ia) of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 (as amended).

12.5). From the aforesaid discussion we observe that the contention of the appellant that they involved in the "Supply of goods" is not tenable in the light of letter dated 15.04.2019 and "License Agreement" entered into between Divisional Railway Manager (Commercial), NCR, Agra and the appellant, which clearly spells the nature of work provide by the appellant as "Supply of Catering Service". Accordingly we observe that the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017(as amended) is squarely applicable on them.

12.6). We notice that appellant is emphasizing that **at** the GMUs, no service, like provision for waiters, service of food on tables, supply of free drinking water, sitting arrangements, air-conditioning, linen, crockery and cutlery, etc. is being provided by them so their transaction should be classified as "Sale of Goods". However, we observe that the appellant has entered into a "License Agreement" with India Railways wherein the clause on "Scope of Service" itself clearly mention the nature of activity to be provided by the appellant as "**to operate, manage and supply catering service on the GMU**". Accordingly, we observe that in the light of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) the activity being undertaken by the appellant is rightly classified under Sl No. 7(ia) of the said Notification i.e. "supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd or their licensees, whether in trains or at platforms".

13) As regard to the availment and utilization of ITC, we observed that the Authority of Advance Ruling has rightly ruled that the whole revenue shall be taxed @ 5% without ITC under serial No. 7(ia) of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017and the appellant cannot claim the Input Tax Credit of GST paid on license fees to Indian railway or IRCTC.

14) As regard to the ruling issued by the Appellate Authority for Advance Ruling-Uttarakhand, in the case of M/s Kundan Mithan Bhandar, on which reliance is paid by the appellant, we observe that in that case, the Party was running a sweet shop and a restaurant in two distinctly marked separate place on their own, whereas, in the instant case the appellant is running a GMU, under the supervision and contractual agreement with Indian Railways for

Catering Service. Accordingly, we observe that the facts and circumstances of M/s Kundan Misthan Bhandar case is entirely different from that of the appellant's case and the ratio of the said case cannot be applied here.

15). In addition to above the appellant has also placed reliance on some other case laws, which are as under:

15.1) In the case of M/s Northern India Caterers Vs. Lt. Governor of Delhi { AIR 1980 SC 674}, on going through the contents of the case we observe that in that case the Party was an eating house/restaurant whereas in the instant case the appellant is a licensee of Indian Railways to operate a GMU under the License Agreement to provide Catering Services. In view of this, we observe that the ratio of the said Judgment cannot be applied in the instant case.

15.2). As regard to the Judgment in the case of State of Himanchal Pradesh Vs.. Associated Hotels of India {1972 2 SCR 937}; we notice that that the Hon'ble Court has observed that:

- a. Even if there is a right to carry away if in essence the transaction is a transaction of service and not a transaction of sale it would not be exigible to tax.
- b. The question whether the dominant object was the sale of food or rendering of service would depend upon the facts and circumstances of each case which has to be decided by the assessing authority in the light of the evidence before it.

We observe that the Hon'ble Court has itself made it clear that the classification of any transaction entirely depends upon the facts and circumstances of that particular case and any correlation cannot be drawn between two cases having different facts and circumstances.

15.3). As far as case of M/s Govind Ram and ors. Vs. Sate of Rajasthan {AIR 1982 Raj 265} is concerned, we observe that in the cited case the sale of food stuffs are being made across the counter , whereas in the appellant's case the vendors even carrying the foodstuffs up to the customers in the specific sized baskets/flasks specified by the India Railways.

15.4). With reference to the case of M/s Sangu Chakra Hotels Private Limited Vs. State of Tamil Nadu {1985 60 STC 125} the party was running a restaurant and also providing take away facility to its customers whereas in the instant case the appellant is running a GMU under License Agreement. We observe that the facts and circumstances of this case i.e nature of service provided, place of

provision of service, control and supervision etc. are entirely different from that of the appellant's case. Hence no parallels can be drawn between them.


15.5). Accordingly, to conclude in a nut shell, we observe that the appellant has quoted case laws prior to GST era, whereas with the introduction of GST, the ambiguity in taxation has been removed to a greater extent. We observe that after introduction of Sl No. 7(ia) in the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) the Law is very much clear that the GST rate on supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd or their licensees, whether in trains or at platforms, will be 5% without ITC.

Thus in light of the above, we pass the order as:-

Ruling

In view of the foregoing discussion and findings we hereby find that the Advance Ruling Order No. 32 dated 3rd June 2019, passed by the Authority on Advance Ruling is just and proper and no interference is required in the said ruling.

The appeal of the appellant i.e. M/s Amar Food Products, 14/310, Madan Mohan gate, Agra is disposed accordingly.


(Shri Karnail Singh)
Member for AAAR
CGST


(Smt. Amrita Soni)
Member for AAAR
SGST

To,
M/s Amar Food Products,
14/310, Madan Mohan gate,
AGRA - 282 002.

APPELLATE AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 09

Date: 01/11/19

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 Commissioner, CGST & Central Excise, Agra.
4. Through the Additional Commissioner, Grade - I, Commercial Tax, Agra to jurisdictional tax assessing officers.