

ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present :

1. Sri Gopal Krishna Pati, IRS, Addl. Commissioner, Office of the Chief Commissionerate, GST, Central Excise & Customs, Bhubaneswar
2. Sri Dillip Satpathy, Special Commissioner of CT&GST Office of the Commissioner, CT&GST, Odisha Banijyakar Bhawan, Cantonment Road, Cuttack-753001-Odisha.

1	Name and Address of the Applicant	M/s Pioneer Bakers, AT-Sahayog Nagar, P.O. Budharaja, Dist-Sambalpur, Odisha, PIN-768003
2	GSTIN or User ID	21AAQFP6408F1ZB
3	Date of Filing of Form GST ARA-01	04.05.2020
4	Present for the Applicant in the E-hearing/Virtual hearing	Suresh Tibrewal
5	Date of Personal Hearing	04.12.2020

ORDER NO.06/ODISHA-AAR/2020-21/DATED 09.03.2021

Subject: M/s Pioneer Bakers, AT-Sahayog Nagar, P.O. Budharaja, Dist-Sambalpur, Odisha, PIN-768003 (herein after referred to as the 'Applicant') having a GSTIN : 21AAQFP6408F1ZB, is a Partnership Firm filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

1.0 The Applicant having assigned with GSTIN number 21AAQFP6408F1ZB sought for an advance ruling in respect of the following questions.



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- a) Whether supply of Cakes, bakery items, ice creams, chocolates, drinks and other eatable products prepared at the premises of the applicant and supplied to the customers from the counter with the facility to consume the same in the air-conditioned premises itself covered under the restaurant services?
- b) Whether supply of items such as birthday stickers, candles, birthday caps, snow sprays etc related items which are essentially used in birthday celebration can be classified as Composite Supply defined under Section 2 (30) of the CGST Act, 2017 and Section 2 (30) of the OGST Act, 2017 wherein the principal supply of goods consists of bakery items, chocolates while the supply of services include the supply of air conditioned place to sit and to celebrate birthday.
- c) Whether the sale of handmade chocolates which are manufactured in the workshop of the Applicant and are utilised for the purpose of providing other services such as shakes, brownies and are also retailed by packing in different containers as per the choice of the customer will be covered under the under the restaurant services?
- d) What is the nature and rate of tax applicable to the following items supplied from the premises of the Bakery shop of the Applicant
- (i) Items such as Birthday caps, knife, decorative items which are bundled along with the cakes and are utilised by the Customers in the premises of the outlets.
 - (ii) Items such as Birthday caps, knife, decorative items which are bundled along with the cakes and are taken away by the Customers from the outlets.
 - (iii) Items such as chocolate, cookies which are prepared in the nearby workshop of the Applicant and then processed / customised in the outlets of the Applicant before selling to the customers
 - (iv) Items such as chocolate, cookies which are prepared in the nearby workshop of the Applicant and then processed / customised in the outlet as per the choice and consumed in the premises itself.

(e) Supposing, the Applicant's firm is covered under the Composite Scheme then in such cases what will be the tax liability charged on goods which are tax free without opting for composite scheme such as bread etc.

(f) Suppose, the Applicant's firm is covered under composite Scheme, then in such circumstances whether the products which are prepared in the workshop but are sold only after certain customizations in the outlets will also be covered under the composite scheme or not?

1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST 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 provision under the OGST Act.

2.0 Submission of the Applicant

2.1 That the Applicant is a registered Partnership Firm and is operating under the Brand name of "Go – cool" since the year 1997. It has established itself as a brand in the field of bakery items and especially in cakes. Further, it has several outlets operating in the state of Odisha and offers a wide range of goods and services in the business of bakery items.

2.2 That, the principal business of the Applicant is producing and selling of bakery products viz cakes, artisan cakes, pastries, pizza, patties, sandwich, self manufactured ice-creams, handmade chocolates, cookies, beverages etc. in its outlets. It is pertinent to mention here that, the applicant offers a number of customization options to its customers with respect to the above mentioned products.

2.3 That, the said bakery products are manufactured either in the premises of the outlets itself and served to the customers or in its workshop which is located nearby to the premises of the outlet of the Applicant. It is pertinent to mention here that generally the raw materials such as raw chocolates, cookies, etc. are manufactured in the workshops as these goods require heavy machinery and are labour intensive in nature and due to these features the same are prepared in the nearby workshop and brought to the outlets for further customization. It





- is hereby clarified that nothing is sold directly from the workshop and each and every item is brought to the outlet for sale.
- 2.4 That, outlets of the applicant are equipped with all the facilities to dine such as table and chairs, air conditioner, drinking water, stylish lights for providing a nice ambience which provide an overall good experience to the customers. It is necessary to mention here that, the customers are provided with the option of either enjoying their food in the outlets itself by utilizing the facilities present in the outlets or they are at the liberty to take away their food.
- 2.5 That, the customer has the option to customize his order by demanding to add or remove any particular ingredient from any item or to add any topping of his choice according to his taste as all these facilities are available in the outlets.
- 2.6 That, the customers also have the option of ordering artisan cakes as per their whims and fancies and the same is prepared and provided in the Applicant's outlets.
- 2.7 That, the customer is free to taste the different flavours of ice creams for selecting his order and after the selection of the same, the customer also has the option of picking the toppings to be put on the ice cream. Further, after finalising the combination of ice cream and topping, the customer can also choose the mode in which the ice cream will be served i.e. cup / cone.
- 2.8 That, with respect to chocolates, there is a display freezer kept with various varieties of chocolates with name tags giving details like flavour and ingredients is displayed with the customer having the option to select the chocolates which can either be consumed in the premises itself or can be taken away after being packed in different customizable containers. The Customers generally after selecting the different varieties of chocolates ask for special packaging in different shaped containers which is also a form of service provided by the Applicant.
- 2.9 That, the raw chocolates manufactured in the workshop is also used in the preparation of brownies, smoothies, shakes and other beverages etc which is prepared in the outlets itself.

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- 2.10 That, the customers also have the freedom to choose a suitable beverage from a whole lot of options or to ask for a custom drink (non – alcoholic) which is prepared instantly in the outlets itself on demand.
- 2.11 That, the outlets offer a whole lot of customization options and the majority of the goods sold are processed or go through any kind of service such as special packaging, decoration, customization before reaching the customers.
- 2.12 That, the facilities provided in the outlets coupled with the ambience makes it a perfect place for customers to celebrate birthdays, anniversaries or any other events of the like kind and accordingly sometimes the customers also demand for special arrangements in the premises itself to celebrate their special moments.
- 2.13 That, while the Applicant is indulged in manufacturing and supplying each and every item from pizza base to ice cream on their own in the outlets or from the workshop, the problem arises while meeting some of the demands of the customers. These items include balloons, plastic knife for cake cutting, birthday caps and posters and other related items used in decoration and this are met by purchasing goods from the market as the Applicant is not indulged in the business of these items.
- 2.14 That, this minority of goods which form an essential & inseparable part of celebrations / birthdays are supplied by the applicant as these form a set of bundled goods which is kind of inseparable as it is natural for a person to demand a knife who is taking a cake. Further, it is very much essential to mention here that, these goods constitutes about a mere of 0.5% of the total turnover of the Applicant and give insignificant profit but the same are necessary to be supplied as they form a part of inseparable combo.
- 2.15 That, the nature of business in the present case is not merely selling of goods but is a combination of goods and services in which the customer avails the above mentioned services / facilities along with the goods in the outlets of the Applicant.
- 2.16 That, the numerous facilities along with options of various customizations / special packaging etc. provided to the customers differentiate the applicant's



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bakery from any normal bakery which are generally involved in resale of manufactured goods.

3.0 The personal hearing was fixed on 04.12.2020 under due intimation to the applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective commissionerate along with a copy of application and the written submission of the applicant). The applicant appeared E-hearing/Virtual hearing through its Representatives. During P.H., Sri Suresh Tibrewal, CA on behalf of the applicant re-iterated the submissions already furnished in the annexure to the application. He explained/submitted the details of activities being undertaken by the applicant in its registered premises. He further submitted following submissions in relation to the questions on hand .

A) That the supply made by the applicant is a composite supply in terms of clause (30) of Section 2 of the Central Goods and Services Tax Act, 2017.

B) That the Restaurant Services have been defined under the purview of 'Composite Supply'. Restaurant is a place of business where food is prepared in the premises and served based on the orders received from the Customers. In the applicant's case, food is prepared in the premises and served to the customers as per their choice and demand. The customers can customize their orders and also enjoy the same by utilizing the dine-in facilities available in the outlets. So, it can be concluded that, the goods coupled with the services provided by the Applicant falls within the purview of 'Restaurant Services' under the composite scheme.

C) That Entry No. 7 (i) of the Notification No. 11 / 2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 46 / 2017 – Central Tax (Rate) dt. 14.11.2017 provides 5% GST which will be applicable to the applicant's case.

D) That supply of goods from the outlet is the principal supply which is a bundled supply of preparation & sale of food items and serving the same as per the wishes of the customer and therefore it constitutes composite supply. The



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consideration charged to the customers for the goods sold is a consolidated charge for the following goods and services :

- 1- Food item supplied.
- 2- Service charges for customization/ packaging as selected by the customer.
- 3- Service Charge for serving the food in the prescribed manner by the customer.
- 4- Air conditioned seating facility with a nice ambience
- 5- Other associated facilities such as drinking water, tissue papers, dustbins etc.

E) That on the basis of the above facts and established legal position, the Goods & Services supplied by the Applicant i.e. making of bakery items, cakes, chocolates, cookies, beverages and supplying the same to customers in a specified and special manner comes within the purview of composite supply and more specifically Restaurant Services and hence should attract a GST levy of 5% under the composite scheme.

F) That the applicant relied the decisions of the following AARs.

i) Advance Ruling No. KAR ADRG 68/2019 passed by the Authority on Advance Rulings in Karnataka in the application filed by M/s Hatsun Agro Product Ltd.

ii) Advance Ruling No. 08/2018-19 passed by the Authority on Advance Rulings for the State of Uttarakhand filed by M/s Kundan Mistan Bhandar.

Discussion & findings

4.0 We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments advanced by Sri Suresh Tibrewal during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. We find that the questions before us essentially pertain to classification of supply of goods/services, the rate of GST applicable on supply of such goods/service and the applicability of Notification issued under the provisions of GST Act. We, therefore observe that the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.



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combination thereof, which are naturally bundled and supplied in conjunction consisting of two or more taxable supplies of goods or services or both, or any "composite supply" means a supply made by a taxable person to a recipient

the provisions of Section 2(30) of the CGST Act.

satisfies the conditions of a 'composite supply', it is pertinent to us to discuss both goods and services. In order to examine as to whether the said supply made to order along with certain services. Hence the applicant is supplying applicant is supplying Cake, Ice Cream and other items of food which are

4.2 The transaction of the applicant is examined and it was found that the

services / facilities along with the goods in the outlets of the Applicant. is a combination of goods and services in which the customer avails the that the nature of business in the present case is not merely selling of goods but decoration, customization before reaching the customers . He has also stated processed or go through any kind of service such as special packaging, a whole lot of customization options and the majority of the goods sold are time of personal hearing, Mr Suresh Tibrewal, CA stated that the outlets offer present in the outlets or they are at the liberty to take away their food. At the option of either enjoying their food in the outlets itself by utilizing the facilities overall good experience to the customers. The customers are provided with the drinking water, stylish lights for providing a nice ambience which provide an equipped with all the facilities to dine such as table and chairs, air conditioner, outlets for sale. Further, it has been submitted that outlets of the applicant are sold directly from the workshop and each and every item is brought to the workshops which are brought to the outlets for further processing. Nothing is Odisha. It was submitted that the raw materials are manufactured in the nearby chocolates, pastries, pizzas, patties, sandwiches, self manufactured ice-creams, handmade applicant is producing and selling of bakery products viz cakes, artisan cakes, in the field of bakery items and especially in cakes. The business of the We are given to understand that the applicant has established itself as a brand

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with each other in the ordinary course of business, one of which is a principal supply;”

Since the supplies made by the applicant in its outlets involve both supplies of goods and services, with one of them as principal supply i.e. supply of goods which are naturally bundled and supplied in conjunction with each other, therefore, the same has to be considered as a composite supply. Further, Restaurant Services have been defined under the purview of composite supply (in clause (b) of para 6 of Schedule –II), the relevant extract is as under.

4.3 Entry No. 6 of the Schedule-II to the Central Goods and Services Tax Act, 2017 reads as under :

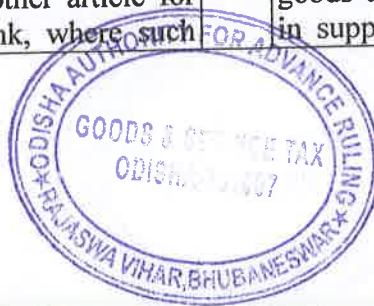
The following composite supplies shall be treated as a supply of services, namely :-

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.”

By virtue of the above provision, the composite supply of goods being food or any other article for human consumption or any drink, where supply or service is for a consideration, then such composite supply shall be treated as a supply of services. Since the applicant is supplying ice creams, cakes and other eatables, which are items for human consumption, by way of or as part of any service or in any other manner, the composite supply has to be treated as a supply of services, more specifically the ‘Restaurant Service’.

4.4 Entry No. 7(i) of the Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 46/2017-Central Tax (Rate), dated 14-11-2017 reads as under :

(3)	(4)	(5)
Supply, by way of or part of any service (i) or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such	2.5	Provided that credit of input tax charged on goods and services used in supplying the service



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On cursory reading of the above, it is seen that the applicant is supplying items of food as a part of service and since the provision of eating in the premises is provided or the customers may take the same away from the applicant's place, the transactions under question are covered under the amended provision of Entry

the rules made there under:”
 sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and reversed as if supply of such service is an exempt supply and attracts provisions of such service and partly for effecting other supplies eligible for input tax credits, is Credit of input tax charged on goods or services used partly for supplying

(a) Credit of input tax charged on goods or services used exclusively in supplying such services has not been taken; and

(b) Credit of input tax charged on goods or services used exclusively in supplying such services has not been taken, it shall mean that, -

Wherever a rate has been prescribed in (iv) this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that, -

The Explanation (iv) to the notification states as under :

<p>has not been taken [please refer to Explanation No. (iv)]</p>	<p>supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</p>
	<p>Explanation - "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.</p>

7(i) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 46/2017-Central Tax (Rate), dated 14-11-2017 and attracts a tax of 2.5% without any input tax credit.

4.5 As regards supply of items such as birthday stickers, candles, birthday caps, Balloon, Carry Bags, snow sprays etc, we observe that the said related items are being purchased and sold as such without any further processing in the restaurant. These items are not articles of foods and drinks and are covered under goods. Sale of such bought out goods as such, is not a service but sale of goods. Entry No. 7 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 relating to the supply of goods reads as under:

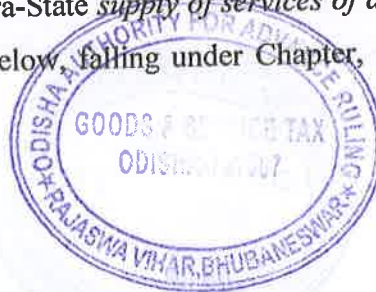
“Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen.”

There is no doubt that the commodities supplied are goods and the entry covers the following transactions :

- (a) Supply of goods being food or any other article for human consumption or drink, by way of any service provided by a restaurant, eating joint including mess, canteen.
- (b) Supply of goods being food or any other article for human consumption or drink, as a part of any service provided by a restaurant, eating joint including mess, canteen.
- (c) Supply of goods being food or any other article for human consumption or drink, in any other manner whatsoever provided by a restaurant, eating joint including mess, canteen.

Hence the present transaction of the applicant is covered under para (c) as the transaction is supply of goods by a restaurant, eating joint including mess, canteen, etc.

But the first few lines of this notification states as under “..... hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of



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scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table".

Since this notification is applicable only to supply of services and not supply of goods, only Notification No. 1/2017-Central Tax (Rate) is applicable and hence all the supply of bought out goods as such which are enlisted by the applicant is taxable as 'supply of goods' and at rates applicable as per Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 as amended from time to time.

4.6 Since the goods as specified above are supplied and output tax is payable on the same, the applicant is eligible to take applicable input tax credit which is admissible as per the GST laws.

4.7 With respect to chocolates, we observe that raw chocolates are manufactured in the nearby workshop of the applicant which are utilised for the purpose of providing other services such as shakes, brownies and are also retailed by packing in different containers as per the choice of the customer. In no case, chocolates are sold as such from the work shop but are customized and sold from the outlets. Therefore, we agree with the submission of the Applicant that sale of handmade chocolates which are manufactured in the workshop and brought to the outlets for further processing will be covered under the 'restaurant services'.

5.0 In view of the above, we rule as follows :

Q.(a) Whether supply of Cakes, bakery items, ice creams, chocolates, drinks and other eatable products prepared at the premises of the applicant and supplied to the customers from the counter with the facility to consume the same in the air-conditioned premises itself covered under the restaurant services?

Ans: Yes, answer is in the affirmative .

Q(b) Whether supply of items such as birthday stickers, candles, birthday caps, snow sprays etc related items which are essentially used in birthday celebration can be classified as Composite Supply defined under Section 2



(30) of the CGST Act, 2017 and Section 2 (30) of the OGST Act, 2017 wherein the principal supply of goods consists of bakery items, chocolates while the supply of services include the supply of air conditioned place to sit and to celebrate birthday.

Ans: The answer is in the 'Negative'.

Q(c) Whether the sale of handmade chocolates which are manufactured in the workshop of the Applicant and are utilised for the purpose of providing other services such as shakes, brownies and are also retailed by packing in different containers as per the choice of the customer will be covered under the under the restaurant services?

Ans: Yes, answer is in the affirmative.

Q(d) What is the nature and rate of tax applicable to the following items supplied from the premises of the Bakery shop of the Applicant

(i) Items such as Birthday caps, knife, decorative items which are bundled along with the cakes and are utilised by the Customers in the premises of the outlets.

Ans: Replied at para 4.5 & 4.6 as above.

(ii) Items such as Birthday caps, knife, decorative items which are bundled along with the cakes and are taken away by the Customers from the outlets.

Ans: Replied at para 4.5 & 4.6 as above.

(iii) Items such as chocolate, cookies which are prepared in the nearby workshop of the Applicant and then processed / customized in the outlets of the Applicant before selling to the customers

(iv) Items such as chocolate, cookies which are prepared in the nearby workshop of the Applicant and then processed / customized in the outlet as per the choice and consumed in the premises itself.

Ans: The supply of the items as mentioned in clause (iii) & (iv) from the premises of the Bakery shop of the Applicant qualifies as 'composite supply' under Section 2(30) of the CGST Act . The said composite supply shall be deemed to be a supply of service as per the Entry 6(b) of Schedule II to the







1. The Commissioner, CGST & Central Excise, Kourkela Commissionerate, Rourkela.

Copy forwarded to:

Odisha, PIN-768003.

M/S Pioneer Bakers, AT-Sahayog Nagar, P.O. Budharaja, Dist-Sambalpur,

To

C. No. V (1) ARA/ODISHA/BBSR/2020/17
5789-84-A
Dated: 25/3/21

Member, CGST

(G K Patil)

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ruling.

Member SGST

(Dillip Satpathy)

Signature
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8.0 The applicant or jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling. 7.0 This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

6.0 The applicant should maintain separate records for restaurant service and supply of goods (supply of bought out items) with respect to input and output and billings as well as other accounting records should also be separately maintained.

Ans: Since the applicant is a manufacturer of 'Ice Creams', he is not eligible for 'Composition Scheme'.

(f) Suppose, the Applicant's firm is covered under composite Scheme, then in such circumstances whether the products which are prepared in the workshop but are sold only after certain customizations in the outlets will also be covered under the composite scheme or not?

Ans: Since the applicant is a manufacturer of 'Ice Creams', he is not eligible for 'Composition Scheme'.

(e) Supposing, the Applicant's firm is covered under the Composite Scheme then in such cases what will be the tax liability charged on goods which are tax free without opting for composite scheme such as bread etc.

CGST Act and more specifically the 'Restaurant Service' and rate of tax is 5% without any input tax credit (2.5% for CGST and 2.5% for SGST).

2. The Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound,
Cuttack-753001, Odisha.
3. Office copy.

