

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/35/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/71)

Date: 03.07.2020

Name and address of the applicant	:	M/s. Tea Post Private Ltd., Plot No.21A/B, Opp. Motel The Village, Kalawad Road, Rajkot- 380059 (Guj)
GSTIN of the applicant	:	24AAFCT5415L1Z8
Date of application	:	31.12.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	<ul style="list-style-type: none"> a) Classification of any goods or services or both; b) Applicability of a notification issued under the provisions of CGST Act; d) Admissibility of input tax credit of tax paid or deemed to have been paid; g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to a result in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	11.06.2020 (through Video Conferencing)
Present for the applicant	:	CA Samirkumar Chaudhary

BRIEF FACTS

The applicant is a Tea House Chain under the brand name and style of *TEA POST*, whereby they sell non-alcoholic beverages, snacks and merchandise items either directly or through outlets owned by them or by third party under the franchise agreement.

2. The applicant enters into a franchise agreement with third parties whereby the applicant gives right to use its trademark, brand name and other

proprietary knowledge (Intellectual Property) to the franchisee. Under the franchise agreement, the applicant receives a **lump sum Franchisee Fee** at the time of entering into the franchise agreement with franchisee to use their trademark, brand name and other proprietary knowledge. The applicant is also entitled for **monthly Royalty** at a pre-determined rate on gross sales revenue of the franchisee or fixed pre-determined amount, whichever is higher, from the franchisee.

3. The applicant is also in the business of developing an outlet on its own by renting out a premises, carrying out necessary interior work, purchasing and installing required equipment for operating the outlet and operates the outlet for a certain period, till they find the purchaser who agrees to carry forward the outlet's operations by entering into two different agreements viz. "Purchase agreement" and "Franchise agreement" with them.

3.1 Under the "Purchase agreement", an operating outlet is sold to the purchaser along with all of its assets which are necessary for continuing the outlet's operations with regularity and permanency and purchaser shall be liable for all the duties and obligation in respect to operating the outlet, along with liabilities towards employees, creditors and government authorities.

3.2 Franchise agreement shall be same as discussed above.

4. In view of above backdrops, the applicant raised 1st Question, as below:

Question 1: Classification of any goods and services or both:

(a) Franchisee Fees: The applicant enters into a franchise agreement with third parties whereby the applicant gives right to use its trademark, brand name and other proprietary knowledge (Intellectual Property) to the franchisee for a lump sum fee to be paid at the time of entering into the contract.

(b) Royalty: Royalty is to be paid by the franchisee to the applicant on monthly basis, at a pre-determined percentage of gross sales revenue of the franchisee or fixed pre-determined amount, whichever is higher.

4.1 In this regard, the applicant submitted that the classification of services under GST Act has been determined in terms of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. As per the applicant's understanding,

both franchisee fee and royalty are covered under Serial No. 17, Heading 9973 (Leasing or rental services with or without operator) of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, attracting GST @12% (6%+6%), as detailed below:

Description of Services- Temporary or permanent transfer or permitting the use or enjoyment of intellectual Property (IP) right in respect of goods other than Information Technology Software.

Annexure of the above said Notification classifies the services covers the Franchisee Fee under *Heading 997336 as – Licensing services for the right to use trademarks and franchises.*

5. The applicant raised 2nd question as below:

Question 2: Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of the term:

Does transfer of an operational outlet (as mentioned in the Description), would amount to “Services by way of transfer of a going concern, as a whole or an independent part thereof” ?

5.1 In this regard, the applicant submitted that under the “Purchase agreement”, purchaser pays a lump consideration to purchase an operating outlet along with all the equipment installed in the outlet which are required for continuing the outlet’s operations with regularity and permanency. As per agreement, purchaser shall be liable for all the duties and obligation in respect to operating the outlet, along with liabilities towards employees, creditors and government authorities.

5.2 The applicant further submitted that Section 7 of CGST Act, 2017 defines scope of supply. *Section 7(1) provides that “Supply” includes all forms of supply of goods or services or both 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 and furtherance of business.* This implies that transfer of operating outlet shall qualify for “Supply”.

5.3 Para 4(c) of the Schedule-II provides that when the business is transferred as a going concern then it does not amount of supply of goods. Activities which constitute supply of services are also described in the

Schedule-II. However, the transaction involving the transfer of a going concern is not covered under this Schedule.

5.4 However, the Serial No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 provides for “*Services by way of transfer of a going concern, as a whole or an independent part thereof*”. This indicates that the activity of transfer of a going concern constitutes a supply of services.

5.5 The applicant further submitted that a going concern is a concept of accounting and applies to the business of the company as a whole or a single unit. Transfer of a going concern means transfer of a running business unit which is capable of being carried on by the purchaser as an independent business with regularity and permanency. Such transfer of business will comprise comprehensive transfer of assets which includes movable as well as immovable and liabilities inherent with business.

5.6 The applicant relies on the Advance Ruling No. KAR ADRG 06/2018 dated 23.04.2018 sought by M/s Rajashri Foods Pvt. Ltd. whereby the applicant intends to sell one of its fully functional manufacturing unit situated at Hiriyur, Karnataka along with assets and liabilities associated with the same unit for a lump sum consideration.

5.7 On the basis of above analysis, the applicant is of the view that the transfer of a operation outlet shall constitutes as supply of “*Services by way of transfer of a going concern, as a whole or an independent part thereof*”.

6. The applicant raised the 3rd question, as below:

Question-3: If the answer to question no. 2 is affirmative then, whether the said services are covered under Sl. No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 and exempted from payment of tax.

6.1 In this regard, the applicant has submitted the extract of the Serial No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 as below:

<i>Sl. No.</i>	<i>Chapter, Section, Heading, Group or Service Code (Tariff)</i>	<i>Description of services</i>	<i>Rate (Percent)</i>	<i>Condition</i>
<i>2</i>	<i>Chapter 99</i>	<i>Services by way of transfer of a going concern, as a whole or an independent part thereof</i>	<i>Nil</i>	<i>Nil</i>

6.2 Thus, as per the said notification activity of transfer of a going concern, as a whole or an independent part thereof is exempted from payment of so much Central Tax leviable under Section 9(1) of the GST Act, 2017.

6.3 The transfer of an operational outlet by the applicant to a third party under “purchase agreement” comprises of transfer of a running business capable of being carried on by the purchaser as an independent business and such transfer has been established by the applicant in paras5 to 5.8 above as “transfer of a going concern”.

6.4 Thus, as per the understanding of the applicant, the transaction of transfer pf an operating outlet by the applicant as a going concern is covered under the Serial No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017.

7. The last Question raised by the applicant is regarding the admissibility of Input Tax Credit of tax paid or deemed to have been paid, as below:

Question-4:If the answer to Question No.2 is negative then, whether the Input Tax Credit of tax paid on the supplies received at the time of developing the outlet is admissible or not?

7.1 In this regard, the applicant has submitted that if the answer to Question No.2 is in negative, which implies that the transfer of operational outlet would not constitute as “Service by way of transfer of a going concern, as a whole or an independent part thereof” and, thus, Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 is not applicable then, such supply shall be liable to payment of tax and shall be treated as supply of goods as per the provisions of Schedule II of the CGST Act, 2018, Para 4(a) which states- where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business

so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

7.2 The applicant understands that the Input Tax Credit can be claimed on inward supplies received at the time of developing the outlet which includes installation of equipment, furniture etc. as the same has been supplied with payment of tax.

8. At the time of personal hearing held through Video Conferencing on 11.06.2020, the Authorised Representative of the applicant, CA Samirkumar Chaudhary reiterated the facts as stated in the Application and submitted the additional submission, vide his letter dated 11.06.2020, as below:

- (i) In the hearing, it was discussed that why the Franchisee Fee service is not going to fall under SAC 998396 where it is mentioned as Trademark and Franchises instead of SAC 997336. To this, they have represented during the hearing that Franchisee Fee collected by them is taken as a Licensee Fee where Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software. Which is specifically mentioned under SAC 997336 and in 998396, it was specifically comes under heading, "Other professional, technical and business services".
- (ii) The detailed analysis of both the SAC is mentioned as under:
Analysis of SAC 998396 is defined as: A uniform format is followed to generate the Service Accounting Code. The first two digits are 99 always for services. The next two digits 83 represent the major nature of service, Other professional, technical and business services in this case. The next two digits 96 represent the detailed nature of service, Trademarks and franchises in this case.

Whereas Analysis of SAC 997336 is defined as: A uniform format is followed to generate the Service Accounting Code. The first two digits are 99 always for services. The next two digits 73 represent the major nature of service, Leasing or rental services with or without operator in this case. The next two digits 36 represent the detailed nature of service, Licensing services for the right to use trademarks and franchises in this case.

And in their case, since they are collecting Franchisee Fee for using their Trademark for limited time period and it is non-refundable and also royalty collected is also for using of Trademark for the brand to the Franchisee to sell the product from franchisee place for limited period only and after completion of Franchisee terms, it will not be allowed to sell the same, thus, for the same, royalty is collected, which is in a nature of Licensing services taken on regular basis for the right to use trademarks and franchises in their case.

So, from the above detailed analysis, they came to conclusion that their Services will fall under SAC 997336 instead of SAC 998396.

- (iii) The point that has been further discussed during the hearing is that the sample agreement which they have submitted shows collection GST at 18% instead of 12%. On this, they have represented that since, they sought for Advance Ruling and awaiting for decision of Advance ruling, on a safer side, client is collecting GST @ 18% and also depositing the same in Govt. treasury through its return, because it may occur that client is collecting 12% and Ruling comes negative and in case of Department checking and they conclude to pay 18% at that time, they will unable to ask their clients (i.e. Franchisee) to pay remaining 6%, since, they will deny at that time and it will result into huge loss, and there may be interest and penalty leviable at that time, thus, it is the reason they are collecting 18% instead of 12%. But, since product is going to fall under SAC 997336 and as per Notification No. 11/2017, it will be charged @12%. So, they requested to consider the same in good faith and give proper justification to the application.
- (iv) All other points for Going Concern for selling Independent Unit which is described as in their application, the summary of the same for your ready reference is submitted that the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017. Column number 3 of the Table in the said notification gives description of the services. Serial number 2 of the notification provides for “Services by way of transfer of a going concern, as a whole or an independent part thereof”. This indicates that the activity of transfer of a going concern constitutes a supply of services.

- (v) Other points mentioned in the application have been discussed in detailed during their hearing and authorities have agreed for the same.
- (vi) In case of any further clarification is required from their side, they will always be available.
- (vii) Hence, they requested to accept their submission and conclude the matter on a positive note.

DISCUSSION & FINDINGS:

.9 We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the questions/issues on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions/issues raised and the applicant's understanding/interpretation of law in respect of the issue. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

10. The applicant has sought advance ruling on four questions, as below:

Question-1: Classification of any goods and services or both for which "Franchisee Fees" and "Royalty" received by the applicant under the franchise agreement from the franchisee for the right to use its trademark, brand name and other proprietary knowledge (Intellectual Property).

Question-2: Does transfer of an operational outlet (as mentioned in the Description), would amount to "Services by way of transfer of a going concern, as a whole or an independent part thereof"?

Question-3: If the answer to question no. 2 is affirmative then, whether the said services are covered under Sl. No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 and exempted from payment of tax?

Question-4: If the answer to Question No.2 is negative then, whether the Input Tax Credit of tax paid on the supplies received at the time of developing the outlet is admissible or not?

11. In this case, the first point is to be decided regarding classification of services for which “**Franchisee Fee**” received in lump sum by them at the time of entering into the **Franchise Agreement** with franchisee and “**Royalty**” amount received on monthly basis, at a pre-determined rate on gross sales revenue of the franchisee or fixed pre- determined amount, whichever is higher, from the franchisee, for right to use their trademark, brand name and other proprietary knowledge (Intellectual Property).

11.1. We find that the applicant entered into franchise agreements with third parties whereby the applicant gives right to use its trademark, brand name and other proprietary knowledge (Intellectual Property) to the franchisee. Under the franchise agreement, the applicant receives a **lump sumFranchisee Fee** at the time of entering into the franchise agreement with franchisee to use their trademark, brand name and other proprietary knowledge. The applicant is also entitled for **monthly Royalty** at a pre-determined rate on gross sales revenue of the franchisee or fixed pre- determined amount, whichever is higher, from the franchisee.

11.2 The applicant submitted that both franchisee fee and royalty are covered under Serial No. 17, Heading 9973 (Leasing or rental services with or without operator) of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, attracting GST @12% (6%+6%). They further submitted that as per the **Annexure: Scheme of Classification of Services**, the Franchisee Fee covers under Service Code 997336 as “*Licensing services for the right to use trademarks and franchises*”.

11.3 For the ease of understanding, the extract of the Serial No. of 17 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 is reproduced herein below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (Percent)	Condition

2	Heading 9973 (Leasing or rental services with or without operator)	(i) Temporary or permanent transfer or permitting the use or enjoyment of intellectual Property (IP) right in respect of goods other than Information Technology Software.	6	-
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11.4 The applicant further submitted that as per the Annexure: Scheme of Classification of Services, the Franchisee Fee and royalty covers under Service Code (Tariff) No. 997336 as “Licensing services for the right to use trademarks and franchises”. The extract of the relevant Service Code (Tariff) viz. 997336 as per Annexure- Scheme of Classification of Services is reproduced herein below:

Sl. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
250	Group 99733		Licensing services for the right to use intellectual property and similar products
256		997336	Licensing services for the right to use trademarks and franchises

11.5 From the above, it is clear that Heading 9973 covers the Group 99733 “**Licensing services for the right to use intellectual property and similar products**”. Further, the Group 99733 covers the service code (Tariff) 997336- “Licensing services for the right to use trademarks and franchises”. Thus, the Heading 9973 does not cover the “Franchise services” provided by the applicant to the franchisee under the Franchise Agreement.

12. The applicant also furnished the sample copy of some agreements. One of the Franchise Agreement made on 18th June, 2018 between the applicant and Anjali Ashishkumar Pandya. Said Franchise Agreement envisages that:

- A. the applicant is engaged in the business of manufacturing, processing, marketing, selling, exporting of tea inter-alia under the brand name “**Tea Post**”.
- B. Tea Post is a concept developed by the applicant for providing a wide variety of food and beverages more particularly, tea beverages prepared by means of a specific methodology and offering such beverages through refreshment cafés and also providing ‘take away’ and ‘home delivery’ services to its

- C. *customer. With a view to develop new business models across the country, the applicant is now desires of opening and setting up various franchises/ café in various parts of the country, under the brand name “Tea post”.*
- D. *Pursuant to and in consideration for the Franchise Fee and Security Deposit (as defined in the agreement), the applicant has agreed to grant in favour of the Franchisee, a franchise to set up, manage, run and operate the Café under the brand name “Tea Post”, in accordance with the Franchisee Manual (as defined in the agreement) for such consideration, and on and subject to such terms and conditions as set out under this Agreement.*

13. We further find that GST Law hasn't defined the term “Franchise”. However, its meaning can be inferred from the Finance Act, 1994, which provides that *a Franchise” means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved; [Section 65 (47) of Finance Act, 1994 as amended]. "Franchisor" means any person who enters in to franchise with a franchisee and includes any associates of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term "franchisee" shall be construed accordingly.*

13.1 The Cambridge Dictionary defines ‘Franchise’, as under:

‘a right to sell a company's products in a particular area using the company's name’.

13.2 The Collins Dictionary defines ‘Franchise’, as under:

‘A franchise is an authority that is given by an organization to someone, allowing them to sell its goods or services or to take part in an activity which the organization controls’.

14. We further find that there is a difference between “licencing” and “franchising”.The difference between licensing and franchising can be drawn clearly on the following grounds:

- (i) Licensing refers to an arrangement between licensor and licensee where latter party would acquire the right to use products and goods where the

ownership remains with the licensor. However, Franchising refers to an arrangement between franchiser and franchisee where the latter will enjoy the ownership of a business on behalf of the franchiser in lieu of a fee where the processes are closely controlled by franchisor. Therefore, it is generally seen that licensing is for products and goods whereas the franchising model is used more in service providing industry.

- (ii) Franchising is an agreement between two parties where the, one party (henceforth referred as the franchisor), permits another party (henceforth referred as the franchisee) to use its brand name or business model for a fee in order to conduct the business as an independent branch of the franchisor. However, Licensing is an agreement between two parties where the, one party (henceforth referred to as the Licensor), sells another party (henceforth referred to as the Licensee) the rights to use its intellectual property or manufacture the licensor's products in exchange of royalty.
- (iii) Licensing deals with Products & Goods like software patented technologies etc. However, Franchising is mostly related to service businesses like food chains, Service Centres of automobiles, etc.
- (iv) The licensee is governed by the licensor's terms of use as prescribed in the licensing agreement for the licensed product. Licensor, however, has no autonomy over the business of the licensee. Franchisor exercises enormous control over the business of the franchisee in terms of quality of service provided, marketing & selling strategies, etc.
- (v) Licensing is an arrangement in which a company (licensor) sells the right to use intellectual property, or produce a company's product to the licensee, for a negotiated fee i.e. royalty. Franchising is an arrangement in which the franchisor permits the franchisee to use business model, brand name or process for a fee, to conduct business, as an independent branch of the parent company (franchisor).
- (vi) Licensing is governed by a licensing agreement, which involves a one-time transfer of property or rights for a fee. There is no technical support or assistance provided by the licensor in most cases. While, Franchising is governed by an elaborate agreement specifying the responsibilities & duties of both the parties involved. The franchisor assists in setting up the service provider with adequate skill & knowledge to emanate its brand to the customers.
- (vii) Licensing does not require registration, whereas registration is a must in the case of franchising.

(viii) In franchising, complete training and support are provided by the franchisor to franchisee which is absent in licensing.

(ix)The licensor has control on the use of intellectual property by the licensee but has no control over the licensee’s business. However, the franchisor exerts considerable control over franchisee’s business and process.

15. From the above, it is amply clear that subject agreement is a Franchise agreement and not a License agreement.

16. We further note that the CBIC has issued the **Explanatory Notes to the Scheme of Classification of Services on 12th June, 2018**.The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. As per the Explanatory Notes, the Service Code (Tariff) 997336-Licensing services for the right to use trademarks and franchises, includes **licensing services** for the right to use trademarks and to operate franchises. As per the statement of facts, the applicant has made a ‘Franchise Agreement’ and not the ‘License Agreement’, therefore, the services in question cannot be said to be “Licensing services”.

17. We, thus, find that the services in question are “Franchising services” as the franchisor permits the franchisee to use business model, brand name or process for a fee, to conduct business, as an independent branch of the applicant’s parent company (franchisor). Hence, Franchising Services in question are classifiable under **Heading-9983-Other professional, technical and business services**, as perthe Serial No. 21 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as reproduced herein below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (Percent)	Condition
21	Heading 9983 (Other professional, technical and business services)	(i) Selling of space for advertisement in print media.	2.5	-
		(ii) Other professional, technical and business service other than (i) above.	9	-

17.1 We further find that as per the Annexure: Scheme of Classification of Services, the Franchisee Fee and Royalty covers under Service Code (Tariff) No. 998396 as “Trademarks and franchises”. The extract of the Service Code (Tariff) No. 998396 as per Annexure- Scheme of Classification of Services is reproduced herein below:

Sl. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
356	Group 99839		Other professional, technical and business service.
362		998396	Trademarks and franchises

17.2 We further find that as per the explanatory notes, the Service Code (Tariff)-**998396-Trademarks and franchises**, includes original trademarks and franchises, i.e. the legally registered ownership of a certain brand name. Further, these products are produced on own account with the intent of deriving benefits from allowing others to use these trademarks or franchises.

17.3 In view of the above, we hold that “Franchisee Fees” and “Royalty” received by the applicant under the franchise agreement from the franchisee for the right to use its trademark, brand name and other proprietary knowledge (Intellectual Property), fall under Chapter Heading**9983 as “Other professional, technical and business services”** and Service Code (Tariff)-**998396-Trademarks and franchises, attracting GST @ 18%.**

18. Now, we come to the 2nd Question i.e. whether *transfer of an operational outlet (as mentioned in the Description), would amount to “Services by way of transfer of a going concern, as a whole or an independent part thereof”?*

19. As per the submissions of the applicant, the operating outlet, including the equipment installed, in its running condition is sold. At this juncture, it is pertinent to note that the applicant develops outlet on its own by **renting out premises**, carrying out necessary interior work, purchasing and installing required equipment for operating the outlet and operates the outlet for a certain period, till they find the purchaser who agrees to carry forward the outlet’s operations by entering into “Purchase agreement” or “Franchise agreement” with them. Thus, it is a case of selling of the equipment/ infrastructure in as much as the land and building is not rented out and not owned by the applicant. Therefore, the question of sale of land and building is ruled out which leaves the only scope of selling the operating equipment/ infrastructure for running the outlet. This is nothing but a sale of goods by the

applicant in the form of equipment/ infrastructure for operating the outlet. Thus, the activity is clearly covered under the ambit of ‘supply’ in terms of the provisions of Sec. 7 of the CGST Act, 2017 of which the relevant text is reproduced under:

(1) For the purposes of this Act, the expression “supply” includes — all forms of supply of goods or services or both 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

Needless to mention here that the goods have been supplied in the course or furtherance of business in as much as the running outlet has been supplied to the recipient for the purpose of running the ‘Teapost’ outlet on a commercial basis.

20. Further the purpose of classification of the activity i.e. whether it is supply of goods or services, the provisions of sub-section 1A of Section 7 of CGST Act, 2017 come into play and the relevant text of the same reads as under:

"where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

20.1 Section 7(1) (d) of the CGST Act, 2017 stipulates that activities referred to in Schedule II shall be treated as supply of goods or supply of services. The entry at serial number 4 of Schedule II to the CGST Act, 2017 deals with “Transfer of business assets” and the same reads as under:

“4. Transfer of business assets:

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, then any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless-

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

In the instant case, the business assets are not supplied for a purpose other than of business and as such the transfer of assets would not be covered under clause (b) above. Further, it is not a case where the applicant ceases to be a taxable person and as such the transfer would not be covered under clause (c). Thus, the transaction is covered under clause (a) which specifies that the transaction would tantamount to supply of goods. Therefore, taking over of assets and liabilities of the applicant by the purchaser is to be construed as “supply of goods” and the same is liable to GST.

20.2 In view of the above, we find that transfer of business assets is to be considered as supply of goods. The transfer of business assets implies that a part of the assets are transferred and not the whole business. In the applicant’s case, only one outlet of his business chain is being transferred/ sold to the recipient. Thus, it is not a case of transfer of an ongoing concern in whole. Further, the transaction is also not covered under the clause ‘*transfer of a going concern as an independent part thereof*’. Independent part of a firm would be a distinct business vertical and not the same vertical of which a certain portion has been transferred to other entity. The applicant is engaged in the business of running outlets in the name of ‘Teapost’ and the business activity is one and only one but is merely having more than one branches for the same business. A branch of the same business vertical can be by no stretch of imagination considered as an independent part of the concern. Thus, we find that the transfer of business assets is covered under the category of ‘supply of goods’ and in no way is covered by the clause ‘*transfer of a going concern, as a whole or an independent part thereof*’. Thus, the transaction becomes a taxable event in terms of the provisions of Sec. 7 read with Sec. 9 of the CGST Act, 2017.

21. The next question for which a Ruling has been sought is whether the

transaction would cover under Serial Number 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017?

22. It is pertinent to note that the exemption under Notification No. 12/2017 Central Tax (Rate) dated 28.6.2017 pertains to exemption granted to supply of services. As amply discussed hereinabove, the transaction is in the nature of 'supply of goods' and, therefore, the provisions of Notification No. 12/2017 Central Tax (Rate) would not be applicable in as much as the transaction does not tantamount to 'supply of services'. Accordingly, the answer is in negative.

24. The last question for which a Ruling has been sought is, if the answer to Question No.2 is negative then, whether the Input Tax Credit of tax paid on the supplies received at the time of developing the outlet is admissible or not?

24.1 Since the answer to question No. 2 is negative, the question of admissibility of Input Tax Credit is to be examined. In this regard, we find that the eligibility of Input Tax Credit is provided for under Sec. 16(1) of the CGST Act, 2017, which reads as under:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

In the instant case, the equipment/ infrastructure of the running outlet is being sold to the recipient as a part of the business activity of the applicant, the same would be covered under Sec. 16(1) of the CGST Act, 2017 and accordingly, the applicant would be eligible for Input Tax Credit subject to fulfilment of all the conditions specified under the Act and the rules made thereunder for admissibility of Input Tax Credit.

25. In light of the foregoing, we rule as under –

R U L I N G

Question-1: Classification of any goods and services or both for which “Franchisee Fees” and “Royalty” received by the applicant under the

franchisee agreement from the franchisee for the right to use its trademark, brand name and other proprietary knowledge (Intellectual Property).

Answer: “Franchisee Fees” and “Royalty” received by the applicant under the franchise agreement from the franchisee for the right to use its trademark, brand name and other proprietary knowledge (Intellectual Property), are to be classified under Heading- **9983- “Other professional, technical and business services”** and Service Code (Tariff)- **998396 – “Trademarks and franchises”** and accordingly, will attract **GST @ 18%**.

Question-2: Does transfer of an operational outlet (as mentioned in the Description), would amount to “Services by way of transfer of a going concern, as a whole or an independent part thereof”?

Answer: Answered in the **negative**, as discussed above.

Question-3: If the answer to question no. 2 is affirmative then, whether the said services are covered under Sl. No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 and exempted from payment of tax?

Answer: Answered in the **negative**, as discussed above.

Question-4: If the answer to Question No.2 is negative then, whether the Input Tax Credit of tax paid on the supplies received at the time of developing the outlet is admissible or not?

Answer: Yes. The applicant would be eligible for Input Tax Credit subject to fulfilment of all the other conditions pertaining to the admissibility thereof laid down in the CGST Act, 2017 and the rules made thereunder.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date : 03.07.2020.