



TELANGANA STATE AUTHORITY FOR ADVANCE RULING

CT Complex, M.J Road, Nampally, Hyderabad-500001.

(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri J. Laxminarayana, Additional Commissioner(Grade-I) (State Tax)

Sri B. Raghu Kiran, IRS, Joint Commissioner (Central Tax)

A.R.Com/35/2018

Date.02.03.2020

TSAAR Order No.02/2020

(Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order)

1. M/s. Sri Venkateshwara Agencies, 4-5-464, 464/1, Esamiya Bazar, Hyderabad, Telangana, (GSTIN No. 36AAACG7442D1ZV) has filed an application in Form GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules, seeking Advance Ruling with regard to applicability of Not. No. 46/2017-CT(R), dated 14.11.2017 in respect of supply of ice cream.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted.
4. Brief facts of the case:
The facts, in brief, that were reported by the tax payer in their application are as follows:
 - a. M/s Sri Venkateswara Agencies is a partnership firm. The said firm are the distributors of "SCOOPS" brand ice cream and ice cream products are supplied by them to sub-distributors, hotels, party orders and retail outlets in Hyderabad.
 - b. They deal with ice-cream products in various places such as Cream stone parlors, Scoops parlors, and sell ice cream to caterers and push cart vendors etc.;

- c. In Cream Stone Parlors, ice cream is served according to the customer taste i.e. scoops of different flavors of ice creams mixing with nuts, fruits and sauces served to the customers according to his/her taste(this includes both dine in and takeaway);
- d. In Scoops Parlors, ice cream products are sold as it is condition i.e. cups, cones, bars, sticks, novelties, ½ litre packs, party packs & bulk packs(this includes both dine in and takeaway)
- e. In party orders, Scoop products are sold to caterers, who in turn serve to their guests.
- f. In party orders, Cream Stone products are served along with their team at the customer site.
- g. They also sell the ice cream products to push cart vendors, who in turn sell to their customer.

5. Questions raised:

With the above background, the applicant sought for rulings with regard to the applicability of provisions of Not. No. 46/2017-CT(R), dated 14.11.2017 (Item No. 1), to the following activities:

- (i) Ice cream and ice cream allied products, milk shakes served in the parlour with or without adding ingredients like fruits or topping sauces according to the customer taste or requirements.
- (ii) Ice cream and ice cream allied products sold in the parlour as such i.e. cups, cones, bars, sticks, novelties, ½ litre packs, party pack and bulk packs etc.
- (iii) Party orders: sale of bulk ice creams to caterers as takeaway.
- (iv) Party orders: Serving of ice creams with incidents like fruits or topping as per the guest requirements or taste.
- (v) Ice cream products of cups, cones bars, sticks, novelties etc. Sold to pushcart vendors, who in turn sell to their customers.

6. Contention of the tax payer:

It was contended by the applicant that in the above activities, the ice cream/ milk shakes are for human consumption with or without adding some ingredients and therefore, the applicable rate of tax would be 5% without credit of input tax as per item No. 1 of Not. No.46/2017-CT(R), dated 14.11.2017.

7. Personal Hearing:

The Authorised representatives of the unit namely Sri. Satish Saraf(CA)and Sri. K. Chandra Sekhar (FC),attended the personal hearing held on 04-12-2019.They reiterated the facts mentioned supra and sought for clarifications in respect of the queries raised in their application. They, further, submitted letter dated 06.12.2019 duly enclosing the following documents:

- 1. Written submissions;
- 2. For GST ARA-01, Payment Challans-SGST & CGST, Acknowledgement for ARN-AD360618000816Z;
- 3. Details of outlets along with photographs
- 4. GST Registration Certificate;
- 5. Copy of Not. No. 46/2017-CT (R) dated 14.11.2017;
- 6. Copy of Advance Ruling No. KAR ADRG 68/2019-issued for M/s Hatsun Agro Product Ltd by the Authority on Advance Ruling, Karnataka.

8. Discussion & Findings:

We have carefully gone through the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing.

The applicant sought for ruling with regard to the applicability of Not. No. 46/2017-CT(R), dated 14.11.2017, (Item No. 1) for certain specified activities. We notice that Not. No. 46/2017-CT (R), dated 14.11.2017 referred by the applicant is only an amending notification which amends the basic Notification No. 11/2017-CT(R), dated 28.06.2017 and the relevant part of the amendment was inserted under Sl. No. 7 of the said notification. As such, the applicability has to be reckoned with reference to Not. No. 11/2017-CT(R), dated 28.06.2017 (Sl. No. 7).Further, it is noticed that the said entry was amended from time to time, the last being done on 30.09.2019 by Not. No. 20.09.2019-CT(R), dated 30.09.2019.We therefore feel it appropriate to analyse the points raised by the applicant duly considering the updated position of the notification.

It is stated by the applicant that in their parlours, certain service activities viz., serving of ice cream by the waiters, seating facility, air conditioning facility, drinking facility, provision of dust bin and tissue papers etc. are provided to the customers. The list of details of activities provided by the applicant are enclosed as Annexure-I to this ruling. The applicant has also submitted photographs corroborating the provision of such services in their parlour. The same are enclosed as Annexure-II to this ruling. We have gone through the same and it is noticed that the applicant is indeed providing certain services to their customers in the parlours managed by them. The present ruling is issued taking into consideration the aforesaid information submitted by the applicant.

Coming to the queries raised by the applicant, the relevant extracts of Not. No.11/2017-CT(R), dated 28.06.2017 with the amendments from 15.11.2017is replicated below:

Position from 15.11.2017 to 30.09.2019

Sl. No.	Chapter, Sec. or Heading	Description of service	Rate (percent.)	Condition
7	Heading 9963	<p>(i) 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, 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><i>Explanation.-</i> “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>	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken. [Please refer to <i>Explanation</i> no. (iv)]

	(ii) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of one thousand rupees and above but less than two thousand five hundred rupees per unit per day or equivalent. <i>Explanation.-</i> “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.	6	
	(iii) 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, where such 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, 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. <i>Explanation.-</i> “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.	9	
*	* Item (iv) vide notification No. 46/2017-Central Tax(Rate) dt. 14.11.2017	*	*
	(v) Supply, by way of or as part of any service or in any other manner whatsoever in outdoor catering wherein goods, being food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), as a part of such outdoor catering and such supply or service is for cash, deferred payment or other valuable consideration	9	
	(vi) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of two thousand five hundred rupees and above but less than seven thousand five hundred rupees per unit per day or equivalent. <i>Explanation.-</i> “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.	9	-
	(vii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together	9	-

		with renting of such premises.		
		<p>(viii) Accommodation in hotels including five star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of seven thousand and 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>	14	-
		<p>(ix) Accommodation, food and beverage services other than (ii), (iii), (v), (vi), (vii) and (viii) above.</p> <p>Explanation.- For the removal of doubt, it is hereby clarified that, 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, 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 shall attract central tax @2.5% without any input tax credit under item(i) above and shall not be levied at the rate as specified under this entry.</p>	9	-

Position from 01.10.2019 to till date:

Sl. No.	Chapter, Sec. or Heading	Description of service	Rate (percent.)	Condition
7	Heading 9963 (Accommodation, food and beverage services)	[(i) Supply of ‘hotel accommodation’ having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
		(ii) Supply of ‘restaurant service’ other than at ‘specified premises’	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> No. (iv)]
		(iii)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.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> No. (iv)]
		(iv) Supply of ‘outdoor catering’, at premises other than ‘specified	2.5	Provided that credit of input tax

		<p>premises' provided by any person other than -</p> <p>(a) suppliers providing 'hotel accommodation' at 'specified premises', or</p> <p>(b) suppliers located in 'specified premises'.</p>		<p>charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> (iv)]</p>
		<p>(v) Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' provided by any person other than -</p> <p>(a) suppliers providing 'hotel accommodation' at 'specified premises', or</p> <p>(b) suppliers located in 'specified premises'.</p>	2.5	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> (iv)]</p>
		<p>(vi) Accommodation, food and beverage services other than (i) to (v) above</p> <p>Explanation :</p> <p>(a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate as specified under this entry.</p> <p>(b) This entry covers supply of 'restaurant service' at 'specified premises'</p> <p>(c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.</p> <p>(d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p> <p>(e) This entry covers composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p>	9	

The points raised by the applicant are analysed in light of the legal/statutory provisions enumerated in the above referred notification and the following conclusions arrived at:

(i) **Supply of ice cream and ice cream allied products, milk shakes served in the parlour with or without adding ingredients like fruits or topping sauces according to the customer taste or requirements:**

As stated by the applicant, in the above mentioned scenario, ice cream and allied products are prepared according to the desires of the customers and are served in the parlour. As stated earlier, the applicant are providing certain service activities such as sitting, serving, air conditioning facility etc., to their customers.

It is pertinent, in this context, to refer to Sl. No. 7(ii) of Not. No. 11/2017-CT(R) dated 28.06.2017 (as amended) which prescribes 5% GST[2.5% CGST +2.5% SGST] without input tax credit in respect of supply of 'restaurant services' other than at 'specified premises'. 'Restaurant service' is defined at para 4(xxxii) of Not. No. 11/2017-CT(R) dated 28.06.2017 (as amended) as *supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, 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.* Further, in terms of para 4(xxxvi) of the said notification 'specified premises' means *premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.*

It is noticed that parlour would fall within the term 'eating joint' and the supply of ice cream along with the service activities by the applicant therein squarely falls under the aforesaid definition of 'restaurant service'. Further, as per the statement of the applicant, it can also be deciphered that supplies are not made in the 'specified premises'.

We, therefore hold that the supplies mentioned in the above transaction fall under Sl. No. 7(ii) of Not. No. 11/2017 -CT (R), dated 28.06.2017 (as amended) and attract 5% GST (2.5% CGST + 2.5% SGST) w.e.f. 1.10.2019 and earlier under Sl. No. 7(i) from 15.11.2017 to 30.09.2019 without availment of credit of input tax charged on goods and services used in supplying the service.

(ii) **Ice cream and ice cream allied products sold in the parlour as such i.e. cups, cones, bars, sticks, novelties, ½ litre packs, party pack and bulk packs etc.:**

The applicant stated that in the above instance company products are sold by the supplier to customers as it is basis without any processing for both dining and take away purpose.

We observe that these supplies since provided in parlours to customers for dining or take away purposes also fall under Sl. No. 7(ii) of Not. No. 11/2017-CT(R) dated 28.06.2017 (as amended), since the activities narrated under this head are covered under 'restaurant service'. Accordingly, we hold that supplies under this category attract 5% GST (2.5% CGST + 2.5% SGST) w.e.f. 1.10.2019 without availability of credit of input tax as they fit in the definition of restaurant service and are not supplied in the specified premises. The same holds good for earlier period (i.e. from 15.11.2017 to

30.09.2019) also as the subject supplies fall under Sl. No. 7(i) of notification

(iii) Party orders: sale of bulk ice creams to caterers as takeaway:

It is apparent from the submissions of the applicant that, ice cream in this case, is supplied by the supplier in bulk quantities to caterers, who in turn supply the same to their customers in party events. The said transaction visibly does not indicate involvement of any service and therefore the same has to be reckoned as supply of goods [i.e. ice cream]. Consequently, we hold that the provisions of Not. No. 11/2017-CT(R), dated 28.06.2017 (as amended) are not applicable to the supply of ice cream supplied in bulk quantities to caterers on takeaway basis.

(iv) Party orders: Serving of ice creams with incidents like fruits or topping as per the guest requirements or taste:

In the aforesaid transaction, it is observed that ice creams will be served at customers premises by the supplier during party events as per the requirements of the guests. It is pertinent, in this context, to refer to para 4(xxxiii) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended), which defines the 'outdoor catering' as *supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature*. We opine that the activities mentioned by the applicant manifestly fall under the category of 'outdoor catering' service in terms of the above definition.

Further, as per Sl. No. 7(iv) of Not. No.11/2017-CT(R), dated 28.06.2017 (as amended) supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than –

- (a) suppliers providing 'hotel accommodation' at 'specified premises', or
- (b) suppliers located in 'specified premises' attract 5% GST without input tax credit availment.

As per the contents of the application, the suppliers, in the case on hand, are not located in 'specified premises' and also do not provide 'hotel accommodation' at 'specified premises'. Hence, we hold that supply of ice cream in the above instance falls under Sl. No. 7(iv) of Not. No. 11/2017-CT(R), dated 28.06.2017 (as amended) and attracts 5%GST (2.5% CGST + 2.5% SGST) without availability of credit of input tax charged on goods and services used in supplying the service. We observe that the subject supply falls under Sl. No. 7(v) for the period from 15.11.2017 to 30.09.2019 and attracts 18% (9% CGST + 9% SGST).

(v) Ice cream products of cups, cones bars, sticks, novelties etc. Sold to pushcart vendors, who in turn sell to their customers:

Since, there is no element of service in the stated transaction, we hold that the provisions of Not. No. 11/2017-CT(R), dated 28.06.2017 (as amended) are not applicable.

Advance Ruling

9. In view of the observations stated above, the following rulings are issued

with regard to the applicability of Not. No. 11/2017-CT(R), dated 28.06.2017 (as amended) to the below mentioned activities:

Activity	Ruling
1. Ice cream and ice cream allied products, milk shakes served in the parlour with or without adding ingredients like fruits or topping sauces according to the customer taste or requirements.	<p>For the period from 15.11.2017 to 30.09.2019 the supply falls under Sl. No. 7(i) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended) and attracts 5% GST (2.5% CGST + 2.5% SGST) without availability of credit of input tax charged on goods and services used in supplying the service.</p> <p>Further, for the period from 01.10.2019. The said supply falls under Sl. No. 7(ii) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended) and attracts 5% GST (2.5% CGST + 2.5% SGST) without availability of credit of input tax charged on goods and services used in supplying the service.</p>
2. Ice cream and ice cream allied products sold in the parlour as such i.e. cups, cones, bars, sticks, novelties, ½ litre packs, party pack and bulk packs etc.	<p>For the period from 15.11.2017 to 30.09.2019 the supply falls under Sl. No. 7(i) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended) and attracts 5% GST (2.5% CGST + 2.5% SGST) without availability of credit of input tax charged on goods and services used in supplying the service.</p> <p>Further, for the period from 01.10.2019,the said supply falls under Sl. No. 7(ii) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended) and attracts 5% GST (2.5% CGST + 2.5% SGST) without availability of credit of input tax charged on goods and services used in supplying the service.</p>
3. Party orders: sale of bulk ice creams to caterers as takeaway.	The provisions of Not. No. 11/2017-CT(R), dated 28.06.2017 (as amended) are not applicable.
4. Party orders: Serving of ice creams with incidents like fruits or topping as per the guest requirements or taste.	<p>Supply falls under Sl. No. 7(v) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended) and attracts 18% GST (9% CGST + 9% SGST) for the period from 15.11.2017 to 30.09.2019.</p> <p>Supply falls under Sl. No. 7(iv) of Not. No. 11/2017-CT (R), dated 28.06.2017 (as amended) and attracts 5% GST (2.5% CGST + 2.5% SGST) without availability of credit of input tax charged on goods and services used in supplying the service for the period from 01.10.2019.</p>

5. Ice cream products of cups, cones bars, sticks, novelties etc. sold to pushcart vendors, who in turn sell to their customers.	The provisions of Not. No. 11/2017-CT(R), dated 28.06.2017 (as amended) are not applicable.
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Sd/- J. Laxminarayana
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghukiran
JOINT COMMISSIONER (Central Tax)

To
M/s. Sri Venkateshwara Agencies,
4-5-464, 464/1, Esamiya Bazar,
Hyderabad, Telangana,- 500 027.

Copy submitted to :
1. The Commissioner (State Tax) for information

Copy to:
1.The Joint Commissioner (State Tax), Abids,
2.The Superintendent(Central Tax & GST, Gunfoundry-2, Range.
//t.c.f.b.o//

Additional Commissioner (ST)(Grade-I)