



GST BULLETIN

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JUDICIAL UPDATES

1. Sale of alcoholic liquor for human consumption an 'exempt supply', requires ITC reversal

Case of : Karnani FNB Specialities LLP

Decision by: AAR, West Bengal

In favour of : Revenue

- The applicant is engaged in the business of providing restaurant services from its lounge bar called "The GRID" and is also providing catering services as well as banquet renting services. Along with such supplies or on a standalone basis, at times, the applicant is also engaged in selling/serving alcoholic liquor for human consumption to its customers.
- Section 16 of the CGST Act deals with the eligibility and conditions for taking ITC for Input Tax charged on any supply of goods or services or both, which are used or intended to be used during the furtherance of business. Section 17 (2) of the CGST Act deals with apportionment of credit i.e., it mandates that a registered supplier providing 'taxable supplies' as well as 'exempt supplies' reverse ITC to the extent of the latter as per the prescribed formula.



- The sale of alcoholic liquor for human consumption is a supply under the GST Act on which tax is not leviable. A supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act is defined as a 'Non-taxable supply' in section 2 (78) of the GST Act. Thus, the sale of liquor shall be treated as a non-taxable supply.
- Section 17(2) of the CGST Act read with rule 42 of the GST Rules allows a registered person to utilize input tax credit to the extent of input tax paid on inputs and input services that are used for making taxable supplies including zero-rated supply and credit of input tax attributable to 'exempt supplies' is to be reversed. Therefore, the activities of selling of alcoholic liquor for human consumption by the applicant would be treated as 'non-taxable supply' and therefore falls under the category of 'exempt supply' under the GST Act.
- Thus, it was held that the applicant is required to reverse input tax credit attributable to the exempt supply under sub-section (2) of section 17 of the GST Act read with rule 42 of the GST Rules.

Full Judgement: [Karnani FNB Specialities LLP](#)

SNR's Take

The proposition as laid by AAR would be subject to diverse opinion as effectively this would result into inclusion of all supplies including supplies out of the ambit of GST law as exempt supply.

2. Composite supply of service by milling wheat into flour to Government for distribution under PDS is exempt

Case of: Jai Lokenath Flour Mills Pvt Ltd

Decision by: Authority for Advance Ruling West Bengal

In favour of Applicant



- The applicant is a flour miller. The applicant submitted that it had entered into an agreement with the State of West Bengal for the conversion of wheat provided by the State Government and owned by the State Government, into atta/ fortified atta, for distribution by the State Government through Public Distribution System.
- AAR stated that Notification No. 2/2018- Central Tax (Rate) dated 25-01-2018 prescribes a methodology for the composite supply of goods and services in which the value of supply of goods constitutes at most 25% of the value of the said composite supply provided to the Government or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat or Municipality, as a supply of services which is exempt from GST.
- Further, Circular No. 153/09/2021-GST dated 17-06-2021 on the subject of GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS, states that in case the supply of service by way of milling of wheat into flour or of paddy into rice is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that the value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No.11/2017- Central Tax (Rate) dated 28.06.2017).



- In the instant case, composite supply stands at 23.03% of the total value of supply. Therefore, it was held that in the instant case, the value of supply shall be the consideration in money as well as non-cash consideration. This composite supply of services by way of milling of wheat into flour (atta) to Govt. for distribution of such flour under PDS is eligible for exemption under serial no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, since the value of goods involved in the such composite supply does not exceed 25% of the value of supply.

Full Judgement: [Jai Lokenath Flour Mills Pvt Ltd](#)

SNR's Take

AAR has scrutinised the relevant notifications and circulars issued by CBIC while issuing the subject ruling.

3. Maintenance services of colonies developed by Chhattisgarh Housing Board, not exempt

Case of: Call Me Services

Decision by: AAR, Chattisgarh

In favour of: Revenue

- The Applicant is engaged in Manpower Supply, Contract Staffing, Security Guards, and Business Auxiliary Services and has been awarded a contract by CGHB. The applicant has requested an advance ruling on whether the applicant's service in regard to the upkeep of different colonies built by CGHB but not handed over to the local government is GST-free.
- Referring to the relevant Sr. No. 3 of Notification no. 12 governing Chapter 99, AAR observes that, such services are eligible for benefit of the NIL rate provided all stipulations mentioned therein are necessarily fulfilled.
- Determines that, as per the Notification, Government Entity means an authority or a board or any other body including a society set up by an act of Parliament or State Legislature, or, established by any Government with 90% or more participants by way of equity or control, to carry out functions entrusted by the Central Govt, State Govt, Union Territory or a Local Authority.
- Perusing the definition of Government as per the General Clauses Act and the functions vested therein, AAR opines that by no stretch of the imagination, CHGB could be considered as a Govt. or local authority.



- Considering that CHGB is the main arm of the Chhattisgarh Govt for giving effect to its housing schemes and for implementing the Govt schemes under social housing, therefore, states that at best, it can be covered under the definition of ‘Government Authority’ or ‘Government Entity’ however, the benefit of exemption to these entities has been withdrawn w.e.f. January 01, 2022, vide Notification no. 16/2021-CT dated November 18, 2021.
- As regards Applicant’s averment that it is providing services which are activities in relation to functions entrusted to a Municipality under Article 243W of the Constitution thus, exempt, AAR reckons that services in relation to maintenance of colonies can in no way be equated to the functions entrusted to a Panchayat or a Municipality.
- Thus, states that the Applicant has not satisfied any of the conditions specified in the notification for claiming the NIL rate of tax.

Full Judgement: [Call Me Services](#)

SNR’s Take

The AAR has rightly held that providing maintenance services for a private colony cannot be deemed equivalent to functions performed by municipality and thus is not exempt from GST.

4. Pre-packaged unbranded foods like Chips, Sev, Gathiya, and Chevda taxable at 12%

Case of : Prajapati Keval Dineshbhai

Decision by: AAR, Gujarat

In favour of : Revenue



- Applicant intends to set up a manufacturing plant of various items for certain unbranded food products like potato chips (Salted and masala for various flavours), potato sev (Aloo sev), potato chivda (potato salli mixture), sing bhujija, sev mamara (roasted puffed rice with nylon sev), chana dal (Fried split Bengal gram), gathiya, khatta mitha chevda mixture, dry starch powder.
- AAR notes that the food products such as salted and flavored Potato Chips, Potato Sev (Aloo Sev), Potato Chivda (Potato Salli Mixture), Sing Bhujija, Sev Mamara (Roasted Puffed Rice with Nylon Sev), Chana Daal (Fried split Bengal Gram), Gathiya and Khatta Mitha Chevda Mixture are salted and savory products which are ready to eat and directly consumed.
- As against Applicant's argument that food products are covered under Entry 101A, Schedule I, taxable at 5% of Notification No. 1/2017 (Rate) since the food packages do not contain any brand, AAR observes that said entry has been amended vide Notification No. 6/2022 -CT (Rate) w.e.f. July 18, 2022; AAR adds that the applicability of GST on the supply having/containing brand name was omitted and in this place, the applicability of GST on the supply of pre-packaged and labeled came into existence.

- Therefore, AAR concludes that the Applicant is not eligible for a 5% rate of tax while making a reference to FAQs on GST applicability issued on pre-packaged and labeled goods.

Full Judgement: [Prajapati Keval Dineshbhai](#)

SNR's Take

The Authority has rightly ruled that the notification dated Notification No. 6/2022 -CT (Rate) has removed the requirement for the product being sold under brand name for applying 12% GST Rate and substituted it with the condition of pre-packaged and labelled.

5. Supply of 'Vouchers' not goods or services, but 'Instrument' like 'Money'

Case of: Premier Sales Promotion Pvt Ltd vs UOI & Ors

Decision by: High Court, Karnataka

In favour of : Assessee

- Assessee is engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers, and E-Vouchers from the issuers and supplying them to its clients for specified face value. These vouchers are used by clients as an incentive granted to their employees etc who can use them as a consideration for the purchase of goods or services or both as specified therein.
- Seeking clarity on the taxability of these Vouchers or Pre-paid Payment Instruments (PPI), the assessee filed an application before the AAR which held that the supply of vouchers is taxable as goods and the time of supply in all the three cases would be governed by Section 12(5) of CGST Act, 2017. The said ruling of AAR was upheld by the AAAR. Hence, the writ petition was filed by the assessee.
- For judging upon the same, the court identified that the issue is "whether, in the facts of this case, vouchers themselves are chargeable to tax at the time of supply or chargeable when goods and services are redeemed?"



- The court stated that the definition of ‘vouchers’ as defined under the CGST Act, makes it clear that vouchers are mere instruments accepted as consideration for the supply of goods or services. They have no inherent value of their own. As vouchers are considered instruments, they would fall under the definition of ‘money’, defined under the CGST Act. The CGST Act excludes ‘money’ from the definition of goods and services and therefore not leviable to tax.
- The court further observed that it is not in dispute that the vouchers involved in the instant petition are semi-closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance & therefore, in substance the transaction between the assessee and his clients is the procurement of printed forms and their delivery. The printed forms are like currency.
- Accordingly, the court quashed the AAR and AAAR orders and allowed the assessee’s writ petition.

Full Judgement: [Premier Sales Promotion Pvt Ltd](#)

SNR’s Take

The court has rightly held that the vouchers do not have inherent value of their own. The value printed on the voucher can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to assessee’s client. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Hence, vouchers are neither goods nor services and therefore cannot be taxed. The judgement shall go a long way in resolving this kind of issues.

CIRCULARS/NOTIFICATIONS:

1. CBIC notifies changes in GST Rates to give effect to the recommendations of the 49th GST Council Meet:

The CBIC issued certain notifications on 28th February 2023 to give effect to the recommendation as discussed by the GST Council in its 49th GST Council meeting held on 18th February 2023. Also, similar notifications have been passed under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and Union Territory Goods and Services Tax Act, 2017 (UTGST Act).

These notifications are issued to give effect to the decisions taken in the meeting in respect to the following:

- Changes in rate of Goods
- Reverse charge mechanism
- Exemption in respect of goods and services
- Exemption from Compensation cess

Read Notification: [GST Rate Notifications](#)



COMPLIANCE CALENDER:

DATE	PARTICULARS
11-03-2023	The last date to file the GSTR-1 form is March 11, 2023, for taxpayers having an annual aggregate turnover of more than INR 1.5 crore or the ones who have opted for the monthly return filing.
13-03-2023	Monthly Invoice Furnishing Facility (February 2023)
13-03-2023	Every Input Service Distributor (ISD) must file GSTR-6 on or before the given due date of 13th March for the period of February 2023.
10-03-2023	The due date for filing GSTR 7 for the period of February 2023 is 10th March.
10-03-2023	The due date for furnishing GSTR 8 for the period February 2023 for registered e-commerce taxpayers in India who are liable to pay TCS should be deducted on or before deducted on or before 10th March.
20-03-2023	Due date for Form GSTR-3B.

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OUR LOCATION

DELHI

A-15, Second Floor, Hauz Khas,
New Delhi- 110016
Tel: +91 11 41655801, 26855884

PUNE

Office No. 5, Kalashree Apartment,
Opposite Bank of Maharashtra,
Karve Road, Pune 411004
Ph: +91 20 25435788

BANGALORE

No. 5A, Second Floor, 6th Main,
KHB Colony, Basaveshwaranagar,
Bangalore - 560079
Tel: +91 80 42064178

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