Crown Beers India Private Limited

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/29/2018-19, Date- 09.04.2019 Dated **09.04.2019**

Q Questions Before the Authority

- Whether the brewing, bottling and packaging of beer by PIL for the Appellant, and the related allied activities under the Agreement, are a supply of alcoholic liquor for human consumption that falls outside GST, or are a supply of services (job work) that attract GST. (Framed from the grounds of appeal; the order does not restate the questions as numbered items.)
- If the activity is held to be a supply of services by way of job work, what is the rate of CGST, MGST and IGST that would be levied on the taxable supply. (Framed from the grounds of appeal; the order does not restate the questions as numbered items.)

F Facts

The Appellant contracted with PIL, a licensed manufacturer of alcoholic liquor, under an Agreement under which PIL brews, bottles and packs beer at its bottling unit and supplies it to buyers or distributors identified by the Appellant. PIL buys the raw materials and is paid a fixed fee, while the costs incurred are reimbursed by the Appellant and the sale proceeds go to a designated bank account controlled by the Appellant. The Appellant contends that the whole consideration is for supply of alcoholic liquor, which is excluded from GST.

H Ruling

Whether brewing, bottling and packing of beer by PIL for the Appellant is a supply of alcoholic liquor outside GST, or job work	**Job work. The activities are in the nature of job work and are not an excluded supply of alcoholic liquor.**	The Authority rejected the Appellant's argument that the transaction is a supply of alcoholic liquor because PIL buys the raw materials and the sale is made by the Appellant. The reasoning rests on the Agreement's terms (PIL acts on the Appellant's instructions, and the Appellant controls the materials, sales and surplus), not only on the Appellant's ownership of goods.
Rate of GST applicable to the job work supply	**18% GST as stated in the operative paragraph 33 and the Order. Paragraph 32 separately refers to 5% (2.5% CGST and 2.5% SGST).**	The order is internally inconsistent on the rate. Paragraph 32 cites entry 26(f) of Notification 11/2017-C.T.(Rate) and a 5% rate, but paragraph 23 holds that the entry 26(f) exemption is not available to alcoholic liquor. Read the full order before relying on any rate.

The Appellate Authority held that PIL acts as a job worker for the Appellant, so the brewing, bottling and packaging activities are job work under Section 2(68) of the CGST Act and are not an excluded supply of alcoholic liquor. The Authority also held that the exemption under entry 26(f) of Notification 11/2017-C.T.(Rate) is not available to alcoholic liquor for human consumption. The order records a tax rate in two places that do not agree: paragraph 32 refers to 5% (2.5% CGST and 2.5% SGST), while the operative paragraph 33 and the Order

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

state 18% GST.

R Reasoning

The Authority relied on the Agreement's clauses showing that PIL procures raw materials under the Appellant's specifications, that the Appellant decides quality and suppliers, and that the Appellant bears costs and receives sale proceeds, so PIL is a job worker under Section 2(68) of the CGST Act. It applied Section 7 on supply and held that the fixed fee paid to PIL is consideration for a service. On the exclusion argument, it reasoned from Article 366(12A), Entry 54 of List II and Section 9(1) of the CGST Act, reading the exclusion as limited to the sale of alcoholic liquor and not to the processes that produce it. It relied on Supreme Court authority on strict construction of exemptions and on the exemption entry 26(f) to deny the exemption. It distinguished the Karnataka Advance Ruling in United Breweries as applicant-specific and non-binding.

P Provisions Relied On

- Section 2(68) of the CGST Act, 2017 (job work) and the parallel MGST Act provision
- Section 7 of the CGST Act, 2017 (meaning of supply)
- Section 9(1) of the CGST Act and Section 9(1) of the MGST Act
- Section 5(1) of the IGST Act, 2017
- Article 366(12A) of the Constitution of India
- Entry 54 of List II, Seventh Schedule, Constitution of India
- Entry 84 of List I, Seventh Schedule, Constitution of India (as discussed by the Appellant)
- Notification 11/2017-C.T.(Rate) dated 28.06.2017, entry 26(f), as amended by Notification 31/2017-C.T.(Rate)
- Notification 8/2017-Integrated Tax (Rate) and Notification 39/2017-Integrated Tax (Rate), as referred to by the Appellant
- Chapter heading 2203 of the Customs Tariff Act, 1975 (beer)
- Section 66D of the Finance Act, 1994 (negative list, for the prior service tax history)
- Collector of Central Excise v. Parle Exports (P) Ltd (1998) and Commissioner of Customs v. Dilip Kumar & Co (2018) (strict c…
- Re Kerala Education Bill, 1957 (AIR 1958 SC 956) and State of Punjab v. Devans Modern Breweries (2004) 11 SCC 26, as ci…
- Advance Ruling No. KAR ADRG 9/2018 dated 29.06.2018 (United Breweries), as cited by the Appellant and distinguished

! For the Practitioner

The order is useful for a practitioner advising contract brewers or bottlers on a brand-owner arrangement, because it treats the contract manufacturer as a job worker and rejects the argument that the arrangement is an excluded supply of alcoholic liquor, even where the contractor buys the inputs. It does not settle the correct GST rate, since the order states both 5% and 18%, and the reader should check the full text before quoting either. It also does not bind any other authority, and it does not address the Karnataka ruling on the contractor's own margin beyond distinguishing it.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah aaar ss-rj 29 2018-19.pdf

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