

M/s. Amar Food Products

Appellate Authority for Advance Ruling — Uttar Pradesh

Order No. 09/AAAR/01/11/2019 dated 01.11.2019

Q Questions Before the Authority

- Whether supply of food items at GMUs (General Minor Units) at Railway Platforms which include only counter sale of packed food items, drinks and cooked item shall be treated as 'Sale of Goods' or 'Sale of Services'?
- If it is sale of services, whether the whole revenue shall be taxed @ 5% without ITC under serial no. 7(ia) of notification no. 11/2017-CT (Rate) dated 28.06.2017 or assessee can opt to pay tax @ 18% with ITC under serial no. 7(ix) of that notification.
- If the assessee pays the taxes @ 5% under serial no. 7(ia), whether assessee can claim the Input Tax Credit (ITC) of GST paid on license fees to Indian Railway or IRCTC.
- If answer to question (iii) is negative. What will be the consequences for wrong availing of ITC?

F Facts

The appellant operates General Minor Units (GMU) at railway platforms, selling packed food, drinks, and cooked items. They contended that their activity constitutes a supply of goods rather than a supply of services, as there is no provision for table service, seating, or other amenities. The appellant sought an advance ruling to determine the classification of their supply and the applicable tax treatment under GST.

H Ruling

Classification of supply	Supply of services	Classified under entry 7(ia) of Notification No. 11/2017-Central Tax (Rate)
Tax rate and ITC	Taxed at 5% without ITC	As per serial no. 7(ia) of Notification No. 11/2017-Central Tax (Rate)
Eligibility for ITC on license fees	Cannot claim ITC	ITC of GST paid on license fees to Indian Railway or IRCTC is not admissible
Consequences of wrong ITC	Question out of purview	The authority stated this question is out of the mandate of Advance Ruling under Section 95(a)

The Appellate Authority upheld the original ruling, confirming that the appellant's activity is classified as a supply of services. Consequently, the revenue is taxable at 5% without the benefit of Input Tax Credit (ITC). The authority rejected the appellant's claim that the activity should be treated as a supply of goods.

R Reasoning

The authority relied on the **License Agreement** between the appellant and the Indian Railways, which explicitly defines the scope of work as 'supply of catering service'. Furthermore, the authority noted that **Notification No.**

11/2017-Central Tax (Rate) , as amended by Notification No. 13/2018-Central Tax (Rate), specifically classifies the supply of food or any other article for human consumption by licensees of Indian Railways at platforms as a 'Supply of Service'. The authority concluded that the language of the notification is plain and must be interpreted as it stands, overriding the appellant's reliance on pre-GST era case laws.

P Provisions Relied On

Section 95(a) of the CGST Act

Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017

Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017

Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018

! For the Practitioner

This ruling clarifies that catering services provided by licensees at railway platforms are **categorically classified as a supply of services** subject to 5% GST without ITC. It serves as a warning to practitioners that contractual terms in license agreements with Indian Railways will be strictly interpreted to determine the nature of supply. It does not provide relief for those seeking to classify such activities as a supply of goods to avail ITC.

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 -> up_aaar_09_2019-20_01.11.2019_afp.pdf

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