ARIHANT ENTERPRISES

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-126/2018-19/B-29, Mumbai, dated 19/3/2019 (the scan read… Dated **19.03.2019**

Q Questions Before the Authority

- Whether supply of ice-cream by the applicant from its retail outlets would be treated as supply of 'goods', supply of 'service', or a 'composite supply' and subject to GST accordingly?
- Whether the supply, not being a composite supply, would be treated as supply of service under entry 6(b) of Schedule II to the CGST Act, 2017 and leviable to CGST at 2.5% under Notification No. 11/2017 as amended by Notification No. 46/2017 (serial no. (i), entry no. 7)?
- In case the supply is held to be a composite supply, whether its taxability should be treated as a supply of service under entry 6(b) of Schedule II, or should instead follow the nature of the principal supply under Section 8?
- In case the supply is held to be a supply of service under entry 6(b) of Schedule II, whether it would be mandatory for the applicant to collect and pay CGST at 2.5% despite entry 7(i) of Notification No. 11/2017 (as amended) being a conditional entry?

F Facts

The applicant is a partnership firm that resells ice-cream bought from its franchisor, M/s Kamaths Ourtimes Icecreams Private Limited, in wholesale and retail packs. The bulk of sales (about 75%) are 500 gm tubs sold at MRP, and the rest are scoops, cones or cups sold over the counter at fixed per-scoop prices, with the product unaltered from its received form. Customers order at a counter, pay, and collect the product, and most outlets offer little or no seating.

H Ruling

Q1: Whether ice-cream sold from retail outlets is supply of goods, service, or composite supply	**Supply of goods**	Tubs sold at MRP involve no service. Scoop and cone sales are also treated as sale of goods, since the dominant object is sale and title passes under Schedule II entry 1(a). Even if composite, the principal supply is goods.
Q2: Whether the non-composite supply is a service under Sch. II entry 6(b) and taxable at CGST 2.5% under Notification 11/2017 (as amended by 46/2017, serial (i), entry 7)	**Answered in the negative**	The order gives no separate reasoning on the notification beyond the Q1 finding that the supply is goods.
Q3: If composite, whether taxable as service under Sch. II entry 6(b) or on the principal supply under Section 8	**Not answered**	Not answered in view of the answer to Question 1.

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

Q4: If service under entry 6(b), whether CGST at 2.5% is mandatory despite the conditional entry 7(i)	**Not answered**	Not answered in view of the answer to Question 1.

The authority held that ice-cream sold by the applicant from its retail outlets is supply of **goods** , not a service. It held that even if the transaction were a composite supply, the principal supply is sale of goods, and it therefore agreed with the jurisdictional officer that the transaction is a sale of goods. Questions 2 to 4 were answered in the negative or left unanswered because they depended on the answer to Question 1.

R Reasoning

The authority relied on the definitions of 'goods' in Section 2(52) and 'service' in Section 2(101), and on the supply charging scheme in Section 7. It found that the applicant sells ice-cream as received, without processing, and that customers take title with no meaningful service element, so the dominant object is sale of goods. It treated the transaction as a transfer of title under entry 1(a) of Schedule II and followed the Rajasthan High Court's decision in Govind Ram v State of Rajasthan on sales across the counter. It also noted that the show cause notice alleging restaurant services had been set aside by the Aurangabad Assistant Commissioner, who found the applicant to be a dealer and not a restaurant.

P Provisions Relied On

- Section 2(52) CGST Act, 2017 (definition of goods)
- Section 2(101) CGST Act, 2017 (definition of service)
- Section 2(30) CGST Act, 2017 (composite supply)
- Section 7 CGST Act, 2017 (scope of supply)
- Section 8 CGST Act, 2017 (tax liability on composite and mixed supplies)
- Schedule II, entry 1(a) CGST Act, 2017 (transfer of title in goods)
- Schedule II, entry 6(b) CGST Act, 2017 (referred to in questions; not applied)
- Notification No. 11/2017-Central Tax (Rate), as amended by Notification No. 46/2017-Central Tax (Rate), serial (i), entry 7 (re…
- Govind Ram and Ors v State of Rajasthan and Ors, AIR 1982 Raj 265 (relied on)

! For the Practitioner

A practitioner dealing with ice-cream parlours, dairy or confectionery resellers, or similar counter sales can cite this ruling for the proposition that sale of packaged or scooped food across the counter, with no seating or table service, is supply of goods. It is useful for resisting a restaurant-service characterisation under entry 6(b). The order does not decide the rate applicable to goods or the conditions of Notification 11/2017, and it leaves Questions 3 and 4 unanswered. Its reasoning is fact-specific, so a seated or table-service outlet would need separate analysis.

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 -> ara_order_126_2018_maharashtra_arihant_ent.pdf

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