M/s. Kundan Misthan Bhandar, Subhash Market, Ramnagar, Nainital (Uttarakhand)

Authority for Advance Ruling — Uttarakhand

Ruling No. 09/2018-19 (Application No. 08/2018-19), Authority for Advanc… Dated **22.10.2018**

Q Questions Before the Authority

- Whether supply of pure food items such as sweetmeats, namkeens, cold drinks and other edible items from a sweetshop which also runs a restaurant is a transaction of supply of goods or a supply of service.
- What is the nature and rate of tax applicable to sweetmeats, namkeens, dhokla, snacks, cold drinks, ice creams and other edible items supplied from the ground floor sweetshop, where the restaurant is on the first floor, and whether the applicant can claim input tax credit on them.
- What is the nature and rate of tax applicable to ready-to-eat (partially or fully pre-cooked/packed) items such as jalebi, chola bhatura and other edible items supplied from live counters, and whether input tax credit can be claimed on them.
- What is the nature and rate of tax applicable where a person sitting in the restaurant orders sweetmeats or namkeens for takeaway and the products are not consumed on the premises, and whether input tax credit can be claimed on them.

F Facts

The applicant runs a sweetshop on the ground floor of a building and a restaurant on the first floor of the same building. It sells sweetmeats, namkeens, cold drinks, ice creams and other edible items, ready-to-eat items from live counters, and takeaway orders placed by persons seated in the restaurant.

H Ruling

Q(a): Whether supply of pure food items from a sweetshop that also runs a restaurant is supply of goods or supply of service	**Supply of service. The sweetshop is treated as an extension of the restaurant.**	The authority reached this on the composite supply analysis, with restaurant service as the principal supply.
Q(b): Rate of GST on the listed items from the ground floor sweetshop, including sweetmeats, namkeens, snacks, cold drinks, ice creams and other edible items	****5 per cent GST** as on date**	Applies only if credit of input tax charged on goods and services used in supplying the service has not been taken.
Q(b)(iii): Takeaway items, including sweetmeats or namkeens ordered by a person seated in the restaurant	****5 per cent GST** as on date, for all items including takeaway items**	Subject to non-availment of input tax credit on goods and services used in supplying the said service.

The authority held that the activity is a composite supply in which the restaurant service is the principal supply, so

the supply is a supply of service and the sweetshop is treated as an extension of the restaurant. The applicable GST rate is 5 per cent, provided the applicant has not availed input tax credit on goods and services used in supplying that service. The 5 per cent rate applies to all items, including takeaway items, on the same condition.

R Reasoning

The authority analysed the definitions of composite supply, mixed supply, principal supply, goods and services in Section 2 of the Act. It found that the food is supplied together with restaurant service in the ordinary course of business, so it is a composite supply where the restaurant service is the principal supply. It then applied Schedule II, paragraph 6(b), which treats supply of food for human consumption as a supply of services where it is made for cash, deferred payment or other valuable consideration. Heading 9963 of the rate notification, Notification No. 11/2017-Central Rate (Tax) dated 28.06.2017, S. No. 7, then fixed the rate at 5 per cent with a condition on input tax credit.

P Provisions Relied On

- Section 97(2) of the CGST/SGST Act, 2017 (scope of advance ruling questions)
- Section 2(30) (composite supply), Section 2(74) (mixed supply), Section 2(90) (principal supply), Section 2(52) (goods), Secti…
- Section 7 read with Schedule II, paragraph 6(b) (composite supply of food treated as supply of services)
- Notification No. 11/2017-Central Rate (Tax) dated 28.06.2017, Heading 9963, S. No. 7 (5 per cent rate with input tax credit co…
- Section 100(1) of the Uttarakhand GST Act, 2017 (appeal against the ruling, as stated in the order's note)

! For the Practitioner

This order is useful for sweetshop-cum-restaurant operators in Uttarakhand, because it applies the composite supply analysis to a combined sweetshop and restaurant and fixes a 5 per cent rate on food supplied in that setting. Practitioners should note the input tax credit condition, which the order attaches to both the rate and the takeaway items. The ruling binds only the applicant, and it does not decide the position for other business models, for input tax credit actually reversed, or for supplies made without any restaurant service.

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 -> uttrakhand_09-2018-19_dtd_22.10.18_kundan.pdf

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