M/s Rajeev Kumar Garg, 14/310, Madan Mohan Gate, Civil Lines, Agra, U.P. 282002 (GSTIN 09AGVPG1061E1ZF)

Authority for Advance Ruling — Uttar Pradesh

Order No. 32, dated 03/06/19 (handwritten date on the scan; the listing gi… Dated **03.06.2019**

Q Questions Before the Authority

- Whether supply of food items at General Minor Units (GMUs) on railway platforms, which include only counter sale of packed food items, drinks and cooked items, is to be treated as 'sale of goods' or 'sale of services'.
- If it is a sale of services, whether the whole revenue is taxable at 5% without ITC under serial no. 7(ia) of Notification No. 11/2017-CT (Rate) dated 28.06.2017, or whether the assessee may opt for 18% with ITC under serial no. 7(ix) of that notification.
- If the assessee pays tax at 5% under serial no. 7(ia), whether it can claim ITC of GST paid on licence fees paid to Indian Railways or IRCTC.
- If the answer to the third question is negative, what the consequences are of wrongly availing ITC.

F Facts

The applicant has been allotted GMUs at Agra Cantt, Agra Fort, Mathura, Saharanpur, Tundla, Firozabad and Etawah railway stations by Indian Railways. At these takeaway counters it sells packed items such as namkeen, chips, biscuits, cake, cold drinks, juice and water, and also sells cooked items such as samosa, kachori, bread cutlet and veg biryani, which are prepared elsewhere. No sitting space, air conditioning, serving or other facility is provided.

H Ruling

Q1: Are GMU counter sales of packed food, drinks and cooked items goods or services?	**Supply of services (Chapter Heading 9963)**	The Authority relied on the entry at serial no. 7(ia), which covers supply of food or drink by Indian Railways, IRCTC or their licensees, whether in trains or at platforms.
Q2: Taxed at 5% without ITC under 7(ia), or optionally at 18% with ITC under 7(ix)?	**5% without ITC under serial no. 7(ia)**	Based on CBEC letter F. No. 354/03/2018-TRU dated 31.03.2018, which fixes 5% without ITC for food and drink supplied at platforms (static units). The option to pay 18% was not accepted.
Q3: Can ITC of GST on licence fees paid to Indian Railways or IRCTC be claimed where tax is paid at 5% under 7(ia)?	**No. The applicant cannot claim the ITC.**	Credit is barred by the condition in the entry and Explanation (iv), under which credit used exclusively or partly for the supply is reversed as if the supply were exempt under section 17(2) of the CGST Act.
Q4: Consequences of wrongly availing ITC	**Not answered. Out of the scope of an advance ruling.**	The Authority held that the question falls outside section 95(a), which limits advance rulings to supply of goods or services undertaken or proposed by the applicant.

The Authority ruled that supply of food items at these GMUs is a **supply of services** under Chapter Heading

9963, and that the whole revenue is taxable at **5% without ITC** under serial no. 7(ia). It held that ITC of GST paid on licence fees to Indian Railways or IRCTC cannot be claimed. It declined to answer the fourth question as being outside the scope of an advance ruling.

R Reasoning

The Authority read Notification No. 11/2017-CT (Rate), as amended by Notification No. 13/2018-CT (Rate), together with Chapter Heading 9963 and serial no. 7(ia). It concluded that the GMU activity is a supply of services and not a supply of goods. It then relied on the CBEC Tax Research Unit letter dated 31.03.2018, approved by the GST Implementation Committee, which fixes a 5% rate without ITC for food and drink supplied at platforms, so the 18% option under 7(ix) was not available. On credit, it applied the condition in the 7(ia) entry and Explanation (iv), which treats credit on inputs used for the service as reversed as though the supply were exempt under section 17(2) of the CGST Act. It declined the fourth question under section 95(a), read with sections 97(2) and 100(1).

P Provisions Relied On

- Section 98 of the CGST Act, 2017 (advance ruling procedure)
- Section 95(a) of the CGST Act, 2017 (definition of advance ruling)
- Section 97(2) and Section 100(1) of the CGST Act, 2017 (referred to for the scope of rulings)
- Section 17(2) of the CGST Act, 2017 (blocked credit where supply is exempt)
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, serial nos. 7(ia) and 7(ix), and Explanation (iv)
- Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018
- Chapter Heading 9963 (accommodation, food and beverage services)
- CBEC Tax Research Unit letter F. No. 354/03/2018-TRU dated 31.03.2018

! For the Practitioner

This ruling is useful for vendors operating counters at railway platforms or other static units run by Indian Railways, IRCTC or their licensees. It settles that such counter sales are services taxed at 5% without ITC, and that licence fees paid to the railways or IRCTC generate no credit. It does not decide the position for vendors who provide seating, serving or other facilities, or for inputs other than licence fees. The Authority also declined the wrongful-ITC question, so a practitioner should not rely on this order for consequences of incorrect credit. Under section 103 the ruling binds only the applicant and the jurisdictional officers.

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

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_aar_32_03.06.2019_rkg.pdf

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